



**Tanzania Women Lawyers Association  
(TAWLA)**

# **Review of Laws and Policies related to gender based violence of Tanzania mainland**







## **Tanzania Women Lawyers Association (TAWLA)**

Gender Equality and Women Empowerment  
(GEWE II)

Review of Laws and Policies related to gender based violence of  
Tanzania mainland

P.O Box 9460  
Dar es Salaam  
Tanzania

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To you all, we say thank you very much!

*Tike Mwambipile*  
**Executive Director**



## LIST OF ABBREVIATIONS AND ACRONYMS

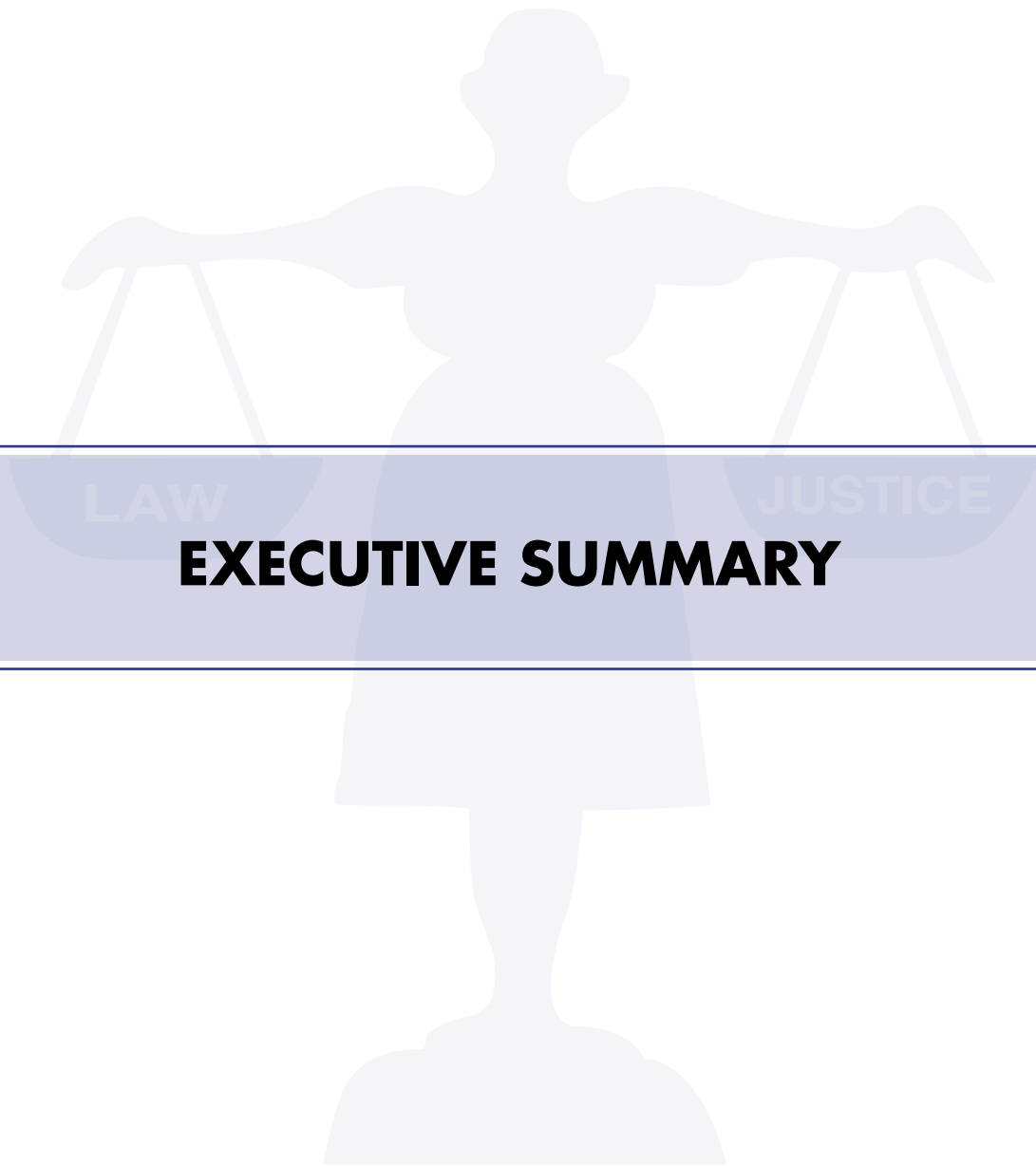
Adv.	Advocate of the High Court of Tanzania
AIDS	Acquired Immune Deficiency Syndrome
APRM	African Peer Review Mechanism
CA	Law of the Child Act, 2009
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women of 1979
DRC	Democratic Republic of Congo
ECSA	East, Central and Southern Africa
EfG	Equality for Growth (Tanzanian based NGO)
FemAct	Feminist Activist Coalition
FGM	Female Genital Mutilation
FLS	Forward Looking Strategies
GBV	Gender Based Violence
G.N	Government Notice
GVRC	Gender Violence Recovery Centre
HIV	Human Immunodeficiency Virus
IDSWG	Institute of Development Studies Women's Group
KIWOHEDE	Kiota for Women's Health and Development
LAPs	Legal Aid Providers
LAS	Legal Aid Secretariat
LHRC	Legal and Human Rights Centre
LMA	Law of Marriage Act, Cap. 29
LVCT	Liverpool Voluntary Counselling and Testing
MCH	Mother and Child Health
MDGs	Millennium Development Goals
MKUKUTA II	Swahili acronym for the National Strategy for Growth and Reduction of Poverty
MoHA	Ministry of Home Affairs
MoHSW	Ministry of Health and Social Welfare





MSM	Men who have Sex with Men
NGOs	Non-Governmental Organizations
NPA	National Plan of Action
OSC	One Stop Centre
PF.3	Police Form Number Three
PGCDs	Police Gender and Children's Desks
REPOA	Research on Poverty Alleviation
SACCOS	Saving and Credit Corporative Societies
SADC	Southern African Development Community
SOSPA	Sexual Offences Special Provisions Act, 1998
TAMWA	Tanzania Media Women Association
TAWLA	Tanzania Women Lawyers Association
TDHS	Tanzania Demographic and Health Survey
TLS	Tanganyika Law Society
TPFNet	Tanzania Police Female Network
Tshs	Tanzanian Shillings
UN	United Nations
UNAIDS	UN Programme on HIV/AIDS
UNFPA	UN Population Fund
UNGAS	United Nations General Assembly
USAID	United States Agency for International Development
USD	United States of America Dollars
VAC	Violence Against Children
VAW	Violence Against Women
VICOBA	Village Community Bank
WHO	World Health Organisation
WiLDAF	Women in Law and Development in Africa
WLAC	Women's Legal Aid Centre
YWDP	Youth and Women Development Project





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## **EXECUTIVE SUMMARY**



# EXECUTIVE SUMMARY

## 0.1 Introduction

The Gender Equality and Women Empowerment (GEWE II) project has been implemented in ten (10) districts of Tanzania Mainland and Zanzibar since 2012. The project is aimed at contributing to the improvement of the living conditions of men and women in Tanzania through a support that promotes gender equality and empowerment of women. TAWLA's role as a partner is to implement the project activities in three districts, namely; Kisarawe, Mvomero and Ilala of Coastal, Morogoro and Dar es Salaam regions respectively.

Part of the project's focus is to consider to what extent do the current legal and institutional frameworks address gender rights issues as far as the project's goal is concerned. This analysis was to make some reflections on those issues. As such, the objectives of the study were; to review the current laws and policies that have an impact on the gender based violence (GBV); and to identify existing gaps as well as suggesting areas for further reforms.

The main methods used to make this analysis were desk review of various documents and consultations with the key informants. The documents reviewed included relevant laws, policies and literatures. The key informant consulted included academicians, practicing lawyers, non-governmental organizations (NGOs) and government officials.

## 0.2 Main Findings

It was generally found that, GBV which is synonymously used to connote violence against women (VAW) is still a reality all over the world. It is, to a large extent, attributed to gender inequality, in which much of the violence is rooted. The occurrence and presence of GBV or VAW is influenced by various factors all of which are society-based. This reality makes it quite complex as the cultural norms causing it differs from one society or community to the other. Apparently, this is why there is no clear and common acceptable language of GBV.

As this report further argues, such complexities and complications of issues regarding GBV/ VAW are reflected in the current Tanzania legal, policy and institutional frameworks. Having contradictory safeguard of the rights of the child in particular the age for marriage of the girl child, could be cited as one of the indicators of the said confusion and intricacy.

As for the prevalence rates, a number of international studies on GBV, in particular the 2001 WHO Study on GBV, suggested that GBV was widely prevalent in each of the Sub-Saharan African (SSA) countries. The major types of GBV included domestic violence/ intimate partner violence, female genital mutilation (FGM), sexual violence and violence against elderly women.



The nature and attributing factors to the occurrence and prevalent rate of GBV as explained above seem to be replicated in almost the same fashion and stance in Tanzania. According to various studies (indicated in the main text of this report) on GBV focusing on Tanzania, GBV incidents are quite rampant in the country. As it is a case for global studies, the local literatures on the subject found out that, GBV is deeply enshrined in the community traditions, customs and culture. Those sources further state that, GBV occurs on a vast scale and takes different forms throughout women's and children lives, ranging from early marriage, FGM, rape, wife beating to abuse of elderly.<sup>1</sup> A recent study conducted by the Tanzania Demographic Health Survey (TDHS) Report of 2010 makes it more explicit that, about 44% of the ever-married women age 15-49 experienced physical or sexual violence by an intimate partner. Of these, 39% of women had ever experienced physical violence while 20% of women reported having experienced sexual violence.

In a bid to address such challenges, Tanzania adopted devise of strategies as this analysis could find it out. Such initiatives include undergoing criminal and civil justice reforms, mainly under the legal sector reform program (LSRP). This has resulted into amendment and enactment of substantive and procedural laws – some which addresses GBV and other gender-related challenges including HIV/AIDS; disability rights; and child rights.

However, despite those and other notable legal reforms, the social and legal protections of vulnerable groups (women, children and others) seem to remain fragile. This situation is partly attributed by presence of bad laws, some of which were named by the Nyalali's Presidential Commission as 40 bad laws about 22 years ago, but, have remained in force all the time.

As this analysis found out, some of the laws with weak or bad provisions or poor enforcement mechanisms as far as protection of vulnerable groups against GBV is concerned include:-

- a) Constitution of the United Republic of Tanzania of 1977: Its bill of rights and duties (Articles 12 to 29 of this Constitution) bars discrimination on the basis of sex addresses only the de jure (letter of the law) and not the de facto (the practical effect on the law on the intended population). This falls short of the definition of CEDAW which requires state parties to address both the law and the practice.
- b) Law Marriage Act, Cap. 29: still sanctions marriage of girls below 18 years contrary to a number of international human rights instruments on the rights of women. The law also sanctions polygamy and is silent on wife beating both of which are highly prevalent cultural practices.
- c) Anti-Trafficking in Persons Act, 2008: Despite the magnitude of the problem, there are only few cases which have been investigated, prosecuted and adjudicated by the court regarding trafficking in persons in Tanzania. This study links this situation with low awareness about the law, lack of pro-active measures by law enforcers, etc.

<sup>1</sup> Every country where reliable large-scale studies have been conducted, between 10 to 50 percent of women report they have been physically abused by an intimate partner in their lifetime (Ref.: Terry, Geraldine (2007) Women's Rights. Oxfam. Small Guides to Big Issues. Page 122).



- d) Penal Code, Cap. 16: It is relatively blunt on GBV in many ways including the fact that, it does not criminalize marital rape; does not contain a specific provision on GBV; some of the GBV offences, in particular, FGM are narrowly covered – left out women who are above 18 years.
- e) Law of the Child Act, 2009: It does not state the legal age of marriage or prohibit child marriages and betrothals.
- f) Employment and Labor Relations Act, 2004: There is no guideline for employers to adhere to while preparing the non-discrimination plan to guide them on how to maintain minimum standards for both men and women.
- g) Land Act, 1999: The provision on presumed interest of spouses in land is not well implemented. If implement it would reduce if not end the problems which widows are facing by being evicted from the matrimonial especially in urban areas.

There are also several policies, strategies and plans relevant on GBV which were reviewed. Such documents include the Women and Gender Development Policy of 2000; National Strategy for Gender Development of 2005; National Policy on Research and Development of 2010; National Economic Empowerment Policy of 2004; Rural Development Strategy of 2001; National Cultural Policy of 1997; Policy on Women in Development in Tanzania of 1992; Community Development Policy of 1996; National Plan of Action for Prevention and Eradication of GBV against Women of 2001 -2015; and National Strategy for Growth and Reduction of Poverty (MKUKUTA II) of 2010. Apart from having comprehensive articulation of the gender problems, most of the Tanzanian policies and strategies do not, among other weaknesses, suggest viable strategies for eradicating negative discrimination against women and girls.

### 0.3 Some of the Recommendations

Due to those weaknesses on legal and policy frameworks on GBV, which are mainly leaning on the inadequate legal provisions and flaw in enforcement of the laws and policies, it is hereby suggested that (these being some of the recommendations), there is a need to:-

- a) Have a specific law on GBV which will also address issues relating to domestic violence and protection of the survivors or/and victims.
- b) Urgently amend of some of the existing laws which appear to infringe women's and girls' rights.
- c) Strengthen law enforcement mechanisms including having in place public awareness programs.
- d) Push for the effective domestication and implementation of all relevant international human rights instruments on the rights of women, girls and other vulnerable groups.
- e) Set up an inter-organizational, multi-sectoral GBV working group from the ward to district and national levels.
- f) Lessening procedural standards for handling GBV cases, including allowing private owned health facilities with qualified medical practitioners, to record



- medical evidence of physical violence if requested by a GBV survivor or victim.
- g) Sensitize of Judges and Magistrates to handle GBV related cases sensitively and effectively.
  - h) Work with local government leaders to translate the GBV plans of action into concrete components of community by-laws.
  - i) Support the police to expand PGCDs and the one stop centre (OSC) services throughout the country.



# **PART ONE: GENERAL INTRODUCTION**

## **1.1 About TAWLA and GEWE II Project**

Tanzania Women Lawyers Association (TAWLA) is a non-profit, non-partisan, non-governmental and human rights organization registered in 1990 under the Societies Act, Cap.337 R.E 2002. TAWLA's core values include: civil rights, social justice, highest moral principles, transparency, integrity, mutual respect, gender equity, accountability and lifelong learning. TAWLA's vision envisages a society that respects and upholds human rights and its mission in society is, the professional advancement of its members and the promotion of women and children's rights and good governance.

As part of the execution of its vision and mission, TAWLA engaged itself in the implementation of the Gender Equality and Women Empowerment (GEWE II) project. That has been done in collaboration with the Tanzania Gender Networking Programme (TGNP); Zanzibar Female Lawyers Association (ZAFELA); Crisis Resolving Centre (CRC); and Tanzania Media Women's Association (TAMWA). The project, which aims at contributing to improvement of the living conditions of men and women in Tanzania through promotion of gender equality and empowerment of women, has been implemented in ten (10) districts of Tanzania Mainland and Zanzibar.

The GEWE II project is coordinated by TAMWA. The specific TAWLA's roles in this partnership include implementation of the project activities in three districts namely; Kisarawe, Mvomero and Ilala of Coastal, Morogoro and Dar es Salaam regions respectively.

Among the activities to be implemented by TAWLA for this project was to conduct a review of relevant laws (and policies) related to gender based violence (GBV) so as to highlight the gaps in those laws (and policies) and make necessary recommendations for amendments. As such, this study was commissioned to accomplish that particular activity.

## **1.2 Meanings of GBV and Violence Against Women (VAW)**

The understanding of GBV, which is synonymously used to connote violence against women (VAW),<sup>2</sup> very much depends on the context. This reality makes it quite complex as the cultural norms causing it differs from one society of community to the other. Apparently, this is why there is no clear and common acceptable definition of GBV.<sup>3</sup> However, the definitions by the World Health Organization (WHO); United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW); and the Ministry of Health and Social Welfare (MoHSW) of the Tanzania, are adopted to aid the analysis on GBV and review of related laws.

<sup>2</sup> IGWG and USAID (2006), Addressing Gender-Based Violence through USAID's Health Programs. A Guide for Health Sector Program Officer. Washington, DC. Page 23.

<sup>3</sup> Baker, L. (2007) Gender – Based Violence Case Definitions. Towards Clarity in Incident Classification. International Research Committee. Circulated Paper. Pages 4 – 8.



The WHO defines GBV to include; domestic violence, sexual harassment, rape, sexual violence during conflict and harmful customary or traditional practices such as FGM, forced marriages and honour crimes. Others are trafficking in women, forced prostitution and violations of human rights in armed conflict (in particular murder, systematic rape, sexual slavery and forced pregnancy). Moreover, according to WHO, incidents of GBV include also forced sterilization, forced abortion, coercive use of contraceptives, female infanticide and prenatal sex selection.<sup>4</sup>

On the other hand, the CEDAW Committee's Recommendation Number Eighteen<sup>5</sup> defines GBV as:-

[v]iolence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

On its side, the MoHSW of Tanzania in its Guidelines for the Health Sector<sup>6</sup> defines the term 'GBV' to mean:

An umbrella term for any act, omission, or conduct that is perpetuated against a person's will and that is based on socially ascribed differences (gender) between males and females. In this context, GBV includes but is not limited to sexual violence, physical violence and harmful traditional practices, and economic and social violence. The term refers to violence that targets individuals or groups on the basis of their being females or male.

It should be noted that, there are some similarities in the definitions adopted by the UN institutions as well as the MoHSW in the definitions. It pertains to the types of violence that illustrate acts of GBV. The MoHSW specifically includes the cultural specific types of violence that are more pronounced in Tanzania such as harmful traditional practices, economic and social violence. Moreover, unlike the WHO and MoHSW definitions, the CEDAW Committee's definition, focuses on violence which happens to women on the basis of their being women. Such violence is commonly known as 'Violence against Women' (VAW).

It should be noted that, the difference between GBV and VAW is not just a matter of terminology but has to do with conceptual issues.

The VAW is specifically defined by the UN Declaration on the Elimination of Violence Against Women of 1993.<sup>7</sup> Article 1 of the said Declaration provides that:

[T]he term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

4 Violence Against Women, [http://www.who.int/topics/gender\\_based\\_violence/en/](http://www.who.int/topics/gender_based_violence/en/) accessed on 20 November 2013.

5 A/RES/48/104 (23 February 1994). See also: CEDAW/C/1992/L.1/Add.15.

6 See URT, National Guidelines for the Health Sector Prevention and Response to Gender Based Violence of 2011.

7 Adopted by the UNGAS Resolution 48/104 of 1993.





The preamble language of the Declaration accounts for the link between VAW and GBV in regard to the attributing factors to the VAW (which are the same as those of GBV as argued above). It states that, the VAW is a manifestation of historically unequal power relations between men and women. According to the Declaration's preamble, such relations have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. Furthermore, this legal instrument declares that, VAW is one of the crucial social mechanisms by which women are forced into subordinate position compared to men.

Due to those similarities between GBV and VAW in terms of causing factors and results of the two as far as gender rights are concerned, this study used the two terms interchangeably. Therefore, whenever GBV is mentioned, VAW is inclusive.

### 1.3 GBV as a Global and National Human Rights Issue of Concern

The GBV is both a global and national (Tanzania) human rights concern. A numerous researches on the subject matter<sup>8</sup> have consistently shown that GBV occurs in all cultures although the intensity and type of violence may differ from one culture, social class, level of education and geographical location to another. Yet the commonality across the variable factors, as the two UN legal instruments cited above state, point to the fact that GBV mostly affects women.

According to the 2010 UNIFEM report (cited above). The domestic violence stands out as one of the most prevalent forms of GBV. Globally, up to 70% of women murder victims are killed by their male intimate partners. Wife beating alone occurs regularly in 85% of all cultures. This indicates that globally, the home is the most dangerous place for women to be.<sup>9</sup>

Note that, at the regional level, a number of international studies on GBV, in particular the 2001 WHO Study on GBV, suggested that GBV was widely prevalent in each of the Sub-Saharan African (SSA) countries due to presence of some harmful traditional practices and weaknesses in legal frameworks to address it.

Tanzania, being part of SSA, is no exception. The Tanzania Demographic Health Survey (TDHS) Report of 2010 shows intimate partner violence to be the most prevalent form of GBV and women and children are the most frequent victims. Presence of some of the community traditions, customs and culture are some of the attributing factors to this situation as stated earlier on. According to various reports,<sup>10</sup> the GBV occur on a vast scale and takes different forms throughout women's and children lives, ranging from early marriage, FGM, rape, wife beating to abuse of elderly.<sup>11</sup>

8 Including: UNIFEM (2010) Women Human Rights in Ethiopia, Sudan, Tanzania and Uganda. Report on Convention to Eliminate All Forms of Discrimination Against Women; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

9 This fact is supported by: Terry, Geraldine (2007) Women's Rights. Oxfam, Small Guides to Big Issues on page 121, who argues that, the domestic violence is the most common form of violence against women.

10 PINGO's Forum (2012) Assessment of the Situation of the Human Rights Violations in Pastoralists, Hunters-Gatherers (Indigenous) Communities of Tanzania (Coverage of 2006-2012 Period). Pages 24 and 25; WILDAF (April – July 2012) Comprehensive Study on the Efficiency of the Enforcement of the Penal Code, Cap. 16 Against the Gender Based Violence in Tanzania; REPOA (2010) 'Gender Based Violence in Tanzania: In Iringa, Musoma, Mtwara and Kinondoni Districts' Study Report; and APRM (2009) Tanzania Country Self-Assessment Report. APRM Tanzania.

11 Every country where reliable large-scale studies have been conducted, between 10 to 50 percent of women report they have been physically abused by an intimate partner in their lifetime (Ref.: Terry, Geraldine (2007) Women's Rights. Oxfam. Small Guides to Big Issues. Page 122).



Moreover, the TDHS Report cited above states that, about 44% of the ever-married women age 15 to and 49 experienced physical or sexual violence by an intimate partner. Of these, 39% of women had ever experienced physical violence while 20% of women reported having experienced sexual violence. On its side, the National Violence Against Children (VAC) Survey Report of 2009<sup>12</sup> revealed that, nearly 1 in 3 females and approximately 1 in 7 males in Tanzania have experienced sexual violence and almost three-quarters of both females and males have experienced physical violence prior to the age of 18. More of these statistics are covered under coming parts of this report.

Conceptually, GBV is both a violation of human rights and a form of discrimination. It has dire consequences for its victims including loss of life, physical injuries and disability, chronic ill health, sexual and reproductive disorders as well as psychological and negative behavioral outcomes. The outcomes of these consequences on individual victims have wider social and economic implications on society as a whole and hence its prioritization as a vice to be nabbed.

#### 1.4 Some Efforts to Address GBV at Global, Regional and National Levels

Globally, the Beijing Declaration and Platform for Action of 1995 adopted a set of priority areas which Tanzania acceded to. Further, the African Union (AU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2003 and Tanzania acceded it in 2006.

Likewise sub-regional bodies such as Southern Africa Development Corporation (SADC) and East African Community (EAC) to which Tanzania is a part of, have adopted several gender related instruments. Those include the SADC Protocol on Gender and Development of 1997; and the Addendum to the 1997 Declaration on Gender and Development By SADC Heads of States or Government of 1998.

Note, Articles 4 and 20 of the said SADC Protocol of 1997 require States to enact and implement legislative and other measures to eliminate all practices negatively affect rights of women, men, girls and boys; Article 20 requires States to ensure that perpetrators of GBV are tried by a court of competent jurisdiction. Moreover, Article 21 of the same Protocol calls for the States to ensure that laws on GBV provide for the comprehensive testing, treatment and care of survivors of sexual offences, which shall include; emergency contraception, ready access to post exposure prophylaxis at all health facilities to reduce the risk of contracting HIV, and preventing the onset of sexually transmitted infections (Tanzania did not have such kind of law as of September 2014 when this report was fine-tuned). On the other hand, Article 11 of the said Addendum to the 1997 Declaration calls for, inter alia, establishment of the special counseling services, legal and police units to provide dedicated and sensitive services to survivors of GBV. Moreover, to ensure that cases of GBV are conducted in a gender sensitive environment. This was to be accomplished by December 2010.

<sup>12</sup> Violence against Children in Tanzania: Findings from a National Survey, 2009. Summary Report on the Prevalence of Sexual, Physical and Emotional Violence, Context of Sexual Violence, and Health and Behavioural Consequences of Violence Experienced in Childhood. Dar es Salaam, Tanzania: UNICEF Tanzania, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, and Muhimbili University of Health and Allied Sciences, 2011.



By agreeing to the aforesaid rights framework, Tanzania promised and intended to consummate the promises contained therein. At the national level therefore, Tanzania has enacted laws and formulated policies with the objective of reducing the incidence of GBV. Public as well as private actors have been involved in the implementation of the interventions in place to mitigate the impact of GBV. Such laws and policies, which are subject matter of this analysis include:

- a) Anti-Trafficking in Persons Act, 2008.
- b) Criminal Procedure Act, Cap. 20.
- c) Customary Laws Declaration Orders of 1963.
- d) Education Act, 1978.
- e) Employment and Labor Relations Act, 2004.
- f) Enforcement of Basic Rights and Duties Act, Cap. 3.
- g) HIV and AIDS (Prevention and Control) Act, 2008.
- h) Indian Succession Act, 1865.
- i) Land Act, 1999.
- j) Law of Marriage Act, Cap. 29.
- k) Law of the Child Act, 2009.
- l) Penal Code, Cap. 16.
- m) Probate and Administration of Estates Act, Cap. 352.
- n) Rights of Persons with Disabilities Act, 2010.
- o) Village Land Act, 1999.

The gender related policies and strategies include; Policy on Women in Development in Tanzania of 1992; Women and Gender Development Policy of 2000; Community Development Policy of 1996; National Economic Empowerment Policy of 2004; National Strategy for Gender Development of 2005; National Land Policy of 1995; National Employment Policy of 1997; National Strategy for Growth and Reduction of Poverty (NSGRP II) of 2010; and United Nations Millennium Development Goals (MDGs) of 2000.

The problem is that the GBV continues to be highly prevalent in Tanzania despite efforts in legal and policy interventions at local and international level. The weaknesses in law enforcement and lack of viable policy strategies could be cited as main reasons for this failure. Moreover, as this report further argues, the complexities and complications of issues regarding GBV/ VAW as explained above seem to be reflected in the current Tanzanian legal, policy and institutional frameworks. Having contradictory safeguard of the rights of the child in particular the age for marriage of the girl child, could be cited as one of the indicators of the said confusion and intricacy.

Despite the fact that Tanzania has adopted devise of strategies including the criminal and civil justice reforms, mainly under the legal sector reform program (LSRP) – which have resulted into having those laws and policies cited above, the social and legal protections of vulnerable groups (women, children and others) seem to remain fragile.



This situation, as this report could argue from this very outset, is partly attributed by presence of bad laws, some of which were named by the Nyalali's Presidential Commission as 40 bad laws about 22 years ago, but, have remained in force all the time. As such a review of the progress made in the legal and policy plans would help identify the missing links in the current legal and policy regime that has implications on GBV prevalence.

## 1.5 Objective of the Study

The objectives of the study were three fold, namely:-

- a) To review the current Tanzanian laws and policies which have impact on GBV.
- b) To identify existing gaps in those laws and policies.
- c) To give recommendations for reforms in terms of addressing the gaps and efficiency of the enforcement of the laws.

## 1.6 Methodology

A combination of methods was employed in this study. These included desk review and interview of key informants. The documents reviewed included international legal instruments indicated in this report; national laws and policies; various reports including those covering GBV in Tanzanian context; and online materials.

The key informant interviews involved non-governmental organizations (NGOs); academicians from higher learning institutions; and practicing advocates including the one who fine-tuned this report.

The findings of this report were validated in number of ways. Those included presentation of the draft report at a review meeting organized by TAVLA on 23<sup>rd</sup> September, 2013 at Colosseum Hotel, Dar es Salaam; incorporation of the review meeting's comments into the second draft report; and commissioning of the pre-final report to experienced human rights lawyer/ consultant for perusal and further comments.



## **CHAPTER TWO:**

# **ANALYSIS OF THE LAWS AND POLICIES ON GENDER BASED VIOLENCE**

## **2.0 Introduction**

This chapter makes an analysis of the laws and policies relevant to GBV in the context of this study. The chapter is divided into four parts. Part one deals with the definition while Part Two presents the legal framework on GBV in Tanzania Mainland. Part three reviews the literature in relation to the sufficiency and effectiveness of the legal landscape and identifies gaps in addressing GBV. Moreover, part four covers the policy framework and some relevant literatures on GBV. Part five makes specific conclusion of the discussion under this chapter.

## **2.1 National Legal Framework on GBV**

The legal framework of Tanzania is pluralistic in nature. That means that there are several systems of law operating side by side in the same jurisdiction. Consequently, there is customary law which is codified under the Customary Law Declaration Order (CLDO) of 1963; Islamic law (predominantly governed by the Holy Quran); and statutory laws.

The application of these systems of law is regulated in part by statutory law to the extent that it supersedes the other two systems. The international legal instruments such as CEDAW and Maputo Protocol (cited earlier on) are not directly applicable in the country unless they are ratified and domesticated by ways of enacting new laws to correspond with their requirements; amend or repeal the laws which contradict the same.

### **2.1.1 Relevant Statutory and Other Laws of Tanzania**

The Statutory laws are those enacted by Parliament. With regard to GBV there is no specific and comprehensive law or laws on GBV. However, some of the GBV incidents are addressed by several laws mentioned in chapter one of this report. The most relevant ones are; the Constitution of the United Republic of Tanzania of 1977; Law of Marriage Act, Cap. 29; and Penal Code, Cap. 16.

#### **i. The Constitution of the United Republic of Tanzania of 1977**

Article 13 of the Constitution of the United Republic of Tanzania of 1977 prohibits discrimination on the basis of gender among other things. Articles 12 to 29 incorporate the Bill of Rights and Duties, which set out the basic rights and duties of citizens which are broad enough to assert and protect rights holders against GBV. Every citizen has a duty to respect women's rights.



Other rights under the said Bill of Rights and Duties include the right to equality before the law; the right to life; right to personal freedom; and the rights to privacy and personal security. It is clear that GBV falls within the ambit of constitutional protections though not in a more explicitly way.

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As for discrimination against women, Article 12 of this Constitution states that all human beings are equal and “every person is entitled to recognition and respect for his dignity.”<sup>13</sup> Moreover, Article 13 guarantees equality and protection before the law “without any discrimination.” The term ‘discrimination’ under Article 13 as different treatment based on, among other things, gender. Sub-Article 5 of Article 13 states that:

[F]or the purpose of this Article the expression “discriminate” means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word “discrimination” shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society.

The ambit of the constitutional mandate is therefore broad and the definition of discrimination encompasses the definition adopted by the CEDAW in Article 1 which states as follows:-

[F]or the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>14</sup>

Thus, there is sufficient space and mandate to adopt and enforce laws and policies that prohibit GBV against women. Failure to protect women and girls from acts of violence that are committed against them is clearly discriminatory.

Article 29 echoes the right to equal protection under the law<sup>15</sup> and also imposes a duty upon every person to “conduct himself and his affairs so as not to infringe upon the rights and freedoms of others or their public interests.”<sup>16</sup>

<sup>13</sup> Article 12 of the Constitution of the United Republic of Tanzania of 1977.

<sup>14</sup> Article 1 of the CEDAW, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

<sup>15</sup> Article 29(2) of the Constitution of the United Republic of Tanzania of 1977.

<sup>16</sup> Article 29(5) of the Constitution of the United Republic of Tanzania of 1977.



## ii. Law of Marriage Act, Cap. 29

The Law of Marriage (LMA) Act, Cap. 29 is the main piece of legislation which governs all forms of matrimonial affairs in Tanzania. It has been in existence since 1971 (43 years); but have never been substantially amended to reflect the current socio-economic situation including the new development in human rights discourse brought about by the CEDAW, Convention on the Rights of the Child (CRC) of 1989, Maputo Protocol and other several instruments.

Note that, this analysis has ascertained that, the LMA contains several shortfalls which demand urgent attention in terms of reform. Such shortfalls include issues relating to age for marriage, spousal beating, polygamy and marital rape as it is has been extensively elucidated below. The above listed areas of concern derived from the provisions of the LMA come into the realm of domestic violence in its broad and specific contexts as illustrated by the studies discussed below. The literature indicated above demonstrate that domestic violence is widespread, a structural phenomenon that spares no social class.

Regarding the age for marriage, the LMA still permits early marriage for a girl child. That is, it allows girls to be married at the age of 15 years provided their parents, specifically the father or in his absence the mother or any other relative in her absence, have consented to the said marriage.<sup>17</sup> This is clearly against the recently enacted law of the Child Act of 2009 which defines a child as a person whose age is below 18 years.

Moreover, Section 10(1) and (2) of the same law allows polygamy under customary, Islamic and civil marriage rites. According to this law, there are two kinds of marriages, namely; monogamous and polygamous marriages. The Islamic and customary marriages are presumed to be polygamous or potentially polygamous, while the Christian marriages are presumed to be monogamous.<sup>18</sup>

Some studies have established relationship between age of marriage and various types of violence. For instance, according to the 2004 study conducted in Zambia on this subject, the risk of violence was found to be declining as age at first marriage increased.<sup>19</sup> Moreover, the Kenyan study of the same year (2004) had found that young women aged between 15 and 24 years, who had ever been married, were much more likely to have experienced forced sex.<sup>20</sup>

As for Tanzanian context, a study conducted in Tanzania on arranged marriages in Tarime, Mara Region and Jambiani in Zanzibar showed that where polygamy is widely practiced women tended to marry early to much older men and such marriages tended to be arranged by families in which the young women are married off to much older men. The effects of this practice include the older being jealousy, controlling and accusatory of the young wives for being unfaithful to the marriage.

<sup>17</sup> Sections 13 (3) and 17(10 and (2) of the LMA.

<sup>18</sup> Section 10 (1) and (2) of the LMA.

<sup>19</sup> Kishor, S and K. Johnson (2004) Profiling Domestic Violence- A Multi-Country Study. Calverton, Maryland. Page 51.

<sup>20</sup> Turan, Janet et al (2004) Addressing Gender-Based Violence in Pregnancy: A Clinic and Community Approach In Rural Kenya. Center for AIDS Research: University of California San Francisco. Page 45.



Moreover, these early marriages (in Tanzania) tend to be polygamous marriages because the older men often have other wives. A related consequence of this scenario is that bride price tends to be higher as a result of which many young men from poorer households find it difficult to marry women of their age group or younger.<sup>21</sup> In these circumstances jealousy accusation of unfaithfulness and controlling behaviour loom large.

Naturally, these suspicions and reactions erode the self confidence of the women concerned which image is passed onto their children who are socialized as such by lived experience and example. As a result, about 44% of the ever-married women age 15 to 49 as the 2010 TDHS (cited above) says seem to experience physical or sexual violence by intimate partners. Other social consequences of early marriages include curtailment of education because of family responsibilities and gender roles associated with marriage. Moreover, there are medical consequences including the poor birth outcomes, morbidity and even mortality of child mother and child due to physiological immaturity; undeveloped life skills that motherhood demands; as well as GBV attributed to the vulnerability due to their tender ages (Ref. URT, National Guidelines for the Integration and Operationalization of One Stop Centers for GBV and VAC Services in Health Facility. MoHSW & MoHA. Government of Tanzania. Page 1).

As for the spousal beating, this analysis ascertained that, this too is not prohibited by the LMA. Instead, Section 66 of this law declares that 'no person has any right to inflict corporal punishment on his or her spouse.' However, in practice wife beating occurs in many rural and urban areas as a result of socialization that insubordinates women.

Moreover, according to TAWLA's experience in legal aid services provision, husband beating is also on the rise but rarely reported. The law enforcement officials tend to view it as a family issue that is best sorted out by the parties concerned and at most with the help of parents and relatives. Such an attitude coupled with the fact that the law does not specifically provide sanctions for wife beating, the declaratory provision falls short of meaningful legal protection against GBV despite the gender blind provisions against bodily assault under the Penal Code, Cap. 16.

The fourth issue of concern is about 'rape.' The definition of 'rape' under the Penal Code, Cap. 16 protects girls and women from rape but leaves out boys and men who may also be victims of forced sex by women in certain circumstances.

It should be noted that, there are several instances where minor males and minor females who had consensual sex either resulting in pregnancy or not but only boys are charged and convicted under the Penal Code while girls go scotch free. There is a feeling that the law seems to be overly protective of female children at the expense of male children. A controversy ensued when a fourteen year old boy was sentenced to life imprisonment for rape because he was above 12 years old and the defense of being a child and therefore not able to form an intention was therefore no longer available to him.

<sup>21</sup> Katapa (1994), *Ibid.*





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On the contrary girls under 18 years are assumed not to be in a position to consent to sexual intercourse and therefore (unless legally married) considered to be victims of rape. In this light, this provision is being viewed as discriminatory against male children.<sup>22</sup> Nonetheless, that study was of the view that the distinction between boys and girls above 12 years regarding sexual responsibility was a necessary precaution to curb possible aggressive tendencies among adolescent boys who may bully girls including sexual violation while girls under 18 are not likely to bully anyone to get them raped.

However, the pluralistic nature of Tanzania's legal system discriminates against women and other marginalized groups in that where there is conflict of law the more empowered groups resort to enforcing the discriminatory laws against the less empowered at the detriment of the latter.<sup>23</sup>

Moreover, women's access to justice is further weakened by environmental factors such as corruption, case delays and economic deprivation. This legal environment runs counter to the provisions of CEDAW and the Protocol to the African Charter on Human and People's Rights (the African Protocol) which requires that both women and men have equal protection under the law as well as access to justice.

### iii. Penal Code, Cap. 16

Penal Code, Cap. 16 is one of the oldest laws in Tanzania. It was incepted long before Tanzania's independence from Britain in 1961.<sup>24</sup> Despite its age, its effects on GBV related prosecutions have remained to be minimal. The missing link has been the gendered interpretation of the law. Apparently, this and other factors necessitated its major amendments done in 1998 through the miscellaneous amendment baptized as Sexual Offences Special Provisions Act (SOSPA) of 1998.

The SOSPA amended several written laws, making special provisions in those laws<sup>25</sup> with regard to sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children. The gist of it was to, inter alia, bring in the much needed shot in the arm that strengthened the mechanism for using the criminal justice system to reinforce the legal regime protecting women's dignity.

<sup>22</sup> Rwebangira, M.K and R. Mramba (2007) An Updated Reference Document on the Policy and Legal Framework Affecting Children Rights in Tanzania. REPOA: Dar es Salaam.

<sup>23</sup> Rwebangira, M. K (1996) Legal Status of Women and Poverty in Tanzania. Nordic African Institute, Uppsala.

<sup>24</sup> Penal Code, Cap. 16 is part of received laws dating back to 1930.

<sup>25</sup> The laws amended include the Penal Code, Criminal Procedure Act, Cap. 20; Evidence Act, Cap. 6; and Children and Young Persons Ordinance, Cap. 13.



Apart from sexual violence (rape), the legislation introduced and widened the offences including trafficking in persons; sexual harassment; and a prohibition on FGM which was the first time for Tanzania to take legislative action against the practice.

The SOSPA also introduced severe punishments for sexual offences including imposition of a minimum sentence of 30 years imprisonment and compensation to a survivor of sexual violence and life imprisonment if the girl raped is less than 10 years old. Moreover, gang rape is recognized as a special crime punishable with life imprisonment for each person in the group, regardless of that persons' role in the rape. Others include gross indecency, with a punishment of not less than ten years imprisonment; sexual exploitation of children, with a punishment of imprisonment from five to twenty years, grave sexual abuse, with a punishment of imprisonment for fifteen to thirty years, but if the victim is less than fifteen years old, imprisonment from twenty to thirty years.

It is, however, unfortunate that the reforms made by SOSPA did not cover domestic violence. This is probably as observed earlier, domestic violence is not defined as an offence under the LMA, 1971 and marital rape is neither an offence under SOSPA or LMA. Information and data about GBV and sexual violence in particular is still lacking. Such sources are imperative in order to support evidence based advocacy and decision making. Although the legislation has improved protection of women and children against GBV including sexual violence and harmful traditional practices, its implementation is still hampered by social pressure to settle complaints out of court and the absence of an official mechanism for monitoring of its impact on the GBV prevalence.

There are offences created under the Penal Code, Cap. 16, which are normally regarded as including domestic violence by the police and judiciary. Such offences include assaults; common assault; and assault causing actual bodily harm.

The common assault is defined as an act by 'any person who unlawfully assaults another.'<sup>26</sup> On the other hand assaults are defined as acts committed by any person that causing

actual bodily harm.<sup>27</sup> The sanctions on conviction are imprisonment for one year and five years respectively. A critical look at the two sections shows that for common assault to qualify as a criminal offence, the act must be unlawful.

Thus if wife or child beating does not result into grievous bodily harm, a charge for common assault of a spouse would not stand. That is where section 66 of the LMA which takes away the right of a spouse to inflict corporal punishment on another spouse comes in an attempt to address domestic violence. However, in practice most women, the community and law enforcers tend to hold the view that wife beating e.g. slapping, arm twisting, pinching etc is permissible as long as no grievous bodily harm results from the assault. This is contrary to law and has a discriminatory effect in accordance with Article 1 of the CEDAW and the CEDAW's Committee's General Recommendation Number 19 (already cited above).

<sup>26</sup> Section 240 of the Penal Code, Cap. 16.

<sup>27</sup> Section 241 of the Penal Code, Cap. 16.



Other types of assaults covered by the Penal Code, Cap. 19 relate to offences endangering life or health. These include assaults causing actual bodily harm (Section 225); wounding and similar acts (Section 228); and failure to supply necessities (Section 229). Moreover, murder and manslaughter are also prohibited by law.

Despite the extensive coverage of some of the sexual offences (with GBV elements), including, there are apparent gaps engulfing the whole criminal justice system as far as gender rights are concerned. Such gaps include:-

- a) Failure to prohibit FGM on adult women.
- b) Absence of prosecutions on FGM perpetrators.
- c) Marital rape is not an offence under the Penal Code, Cap. 16 or LMA.
- d) The law is silent on domestic violence.
- e) The penalty of stern sentences of 30 years minimum imprisonment has tended to work against survivors of GBV who are often dependant on their assailant for their survival (and their children).
- f) Absence of shelters for victims and survivors of GBV in most parts of Tanzania effectively renders the legal process effectively inaccessible as most violence occurs in the home.
- g) The requirement to prove penetration for rape, which may be next to impossible to prove in many cases where forensic evidence is lacking, is another hurdle to reporting and securing a conviction.
- h) Although the reforms regarding Police Form Number (PF.3) has eased the cumbersome and victim unfriendly procedure for treatment of the GBV, the requirement to be filled by a medical officer at a government facility is still a serious limitation because the government health facility are few and widely spaced. This creates a constraint of transport charges to hire a taxi to reach the said facility.
- i) Many health facilities charge a fee of Tshs 5,000 in Dar es Salaam and between Tshs 2,000 and Tshs 3,000 upcountry for filling in the PF.3. According to the TPFNet operators, often the GBV victims and survivors have no money on their person by the time they escape from their assailants to the safety of a police station.
- j) Finally, compensation to the victim has to wait for the release of a convicted perpetrator from prison after thirty years. In practice, apart from family pressure and police corruption forces victims to give up pursue of legal remedies or settle out of Court.

#### iv. Evidence Act, Cap. 6

The Evidence Act, Cap. 6 is 1967 legislation. It has undergone several amendments ever since including the 1998 which was introduced by SOSPA. The 1998 amendment was intended to widen its Section 27 regarding admissibility of evidence in Court of law. The said provision has been widened to incorporate the value of the evidence of a child of tender years. That is, a child of tender years who is a victim of a sexual offence is allowed to give evidence of the events even if it is uncorroborated provided the Court finds such evidence credible.



This provision has helped to give value to the evidence of children in sexual offences so long as they are assessed as able to understand the nature of the proceedings and give credible evidence through a *voire dire* test. That seems to be helpful because the data from the police shows that the highest number of sexual victims among both females and males (below the age of 15 years) doubled between 2004 and 2008 countrywide.<sup>28</sup>

Moreover, the following Table shows that between 2009 to 2012 more than half the cases of patients at Iringa Regional Hospital who fill out PF. 3 (for victims of sexual assault) were persons between the ages of 0 to 15 years.

Figure 1: Statistics of Patients/ Clients Attended to Iringa Regional Hospital 2009-2012 showing age of GBV victims (for check in and filling in PF.3)

YEAR	AGE (Years)	PF.3 (Administered )	TOTAL
2009	0-5	2	17
	6-15	7	
	16-21	4	
	22+	4	
2010	0-5	2	22
	6-15	11	
	16-21	6	
	22+	3	
2011	0-5	3	16
	6-15	6	
	16-21	5	
	22+	2	
2012	0-5	2	11
	6-15	7	
	16-21	2	
	22+	0	
<b>GRAND TOTAL:</b>			<b>66</b>

Source: WILDAF Report, 2012.

## v. Criminal Procedure Act, Cap. 20

The Criminal Procedure Act (CPA) was enacted in 1985. It provides for the procedures of handling criminal offences at all levels of criminal justice system in Tanzania. The CPA prescribes specific provisions relevant to GBV including:

- i) Mode of searching women – Section 26 of the CPA which provides that ‘whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.’
- ii) Treatment of persons under restraint - Section 55(1) and (2) of the CPA which state that, ‘a person shall, while under restraint, be treated with humanity and with respect for human dignity;’ and that, ‘no person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment.’

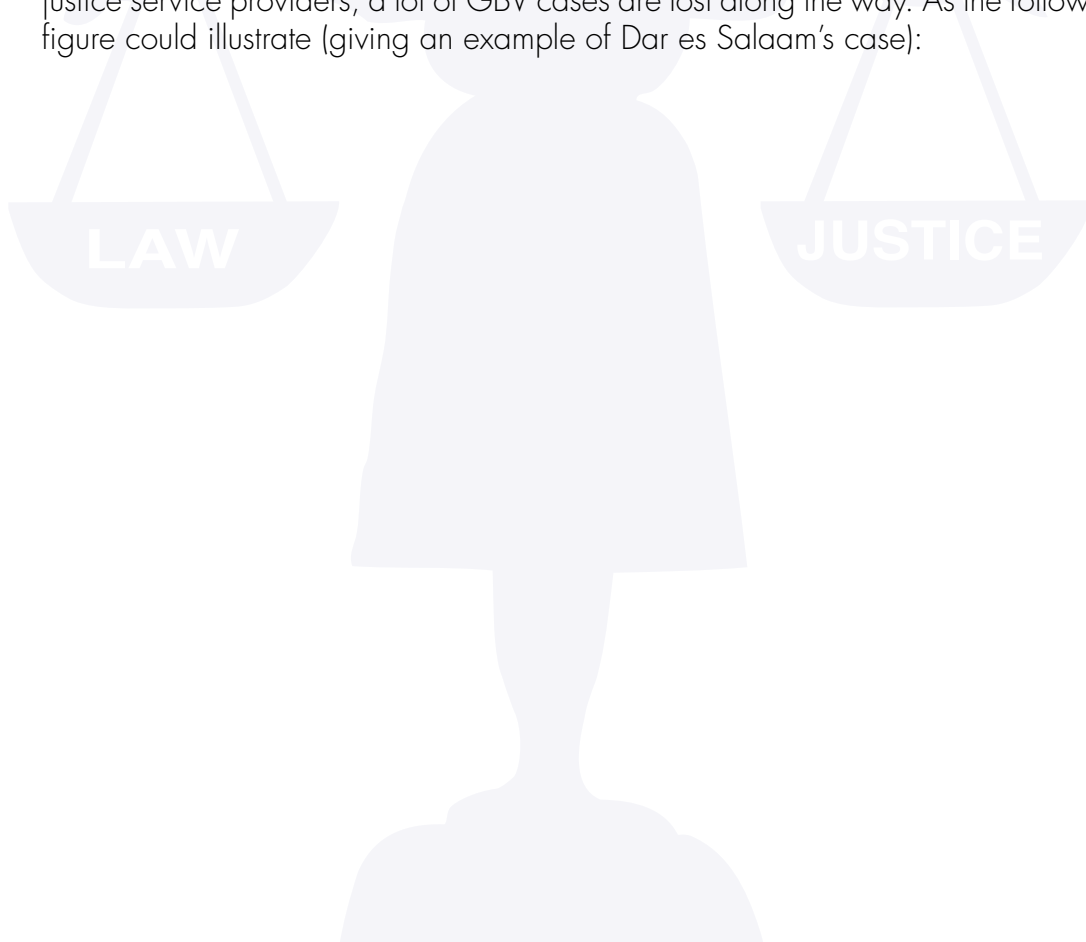
<sup>28</sup> Quoted from: the Tanzania Women Judges Association (TAWJA), Stopping the Abuse of Power for Purposes of Sexual Exploitation: Naming, Shaming and Ending Sextortion. A Toolkit for the Programme of the TAWJA in Collaboration with the International Association of Women Judges (IAWJ), Dares-Salaam (undated).



The prosecutorial responsibility is vested on the office of the Director of Public Prosecutions (DPP). Such office is established under Article 58B of the Constitution of the United Republic of 1977. DPP's functions and powers are also provided for under the CPA, National Prosecution Act, 2008; and the Attorney General (Discharge of Duties) Act, 2005.

The said National Prosecution Act, 2008 was enacted purposely for effecting separation of prosecution from investigation whereby from then, the prosecutorial responsibility was civilized. Moreover, in order to give this effect, the CPA was also amended to the effect that prosecution of all criminal offences (including GBV incidents) is under full control of the office of the DPP.<sup>29</sup>

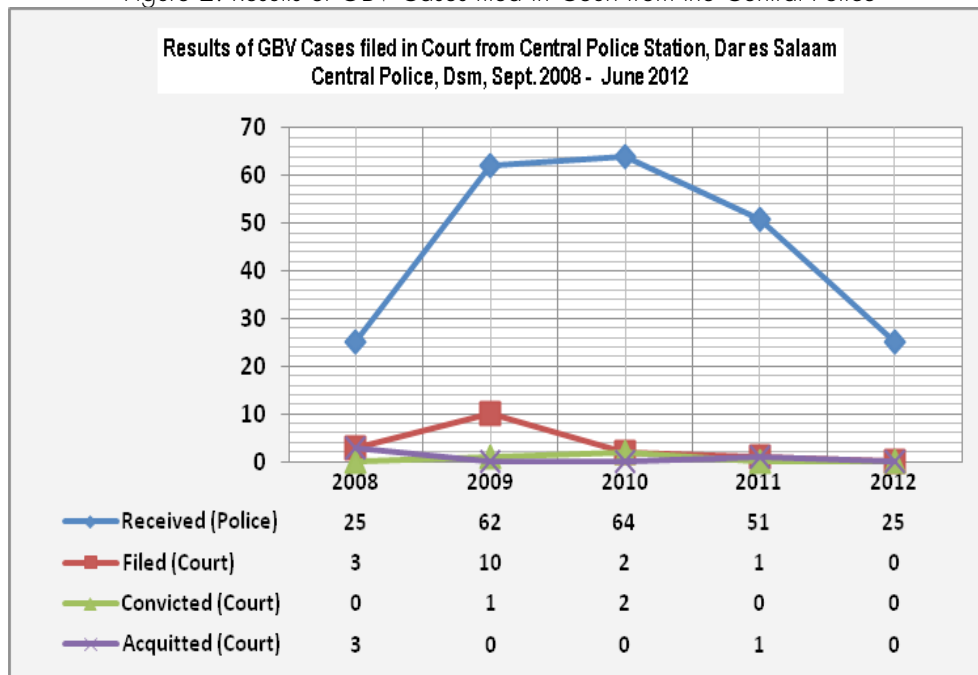
The burden of proof of the commission of criminal offences is usually rests on the prosecution. However, due to lack of effective referral and coordination mechanisms between the police force (investigators); DPP office (prosecutors); and other criminal justice service providers, a lot of GBV cases are lost along the way. As the following figure could illustrate (giving an example of Dar es Salaam's case):



<sup>29</sup> Sections 222, 91, 98 and 226 of the Criminal Procedure Act, Cap. 20 as amended in 2011.



Figure 2: Results of GBV Cases filed in Court from the Central Police



Source: WiLDAF's Report 2012, Page 40.

As it can be seen from the figure above, there is a huge gap between what is reported to the police station and the intended results which is basically finding a suspect guilty of the GBV crime committed. As WiLDAF rightly suggested, something needs to be done in order to give the whole exercise of investigation and prosecution the intended meaning. Otherwise, with this kind of the results, the deterrence purpose of having strict laws such as Penal Code, Cap. 16 would never be seen.

TAWLA suggests that in order to achieve a conviction the investigating and prosecutorial organs mentioned above need to be able appreciate the circumstances and appraise the evidence competently to the required standard of proof, help to procure the prosecution witness to be available and if necessary arrange for their protection. With regard to witness protection, this is still offered in outstanding public profile cases.<sup>30</sup>

## vi. The Prevention and Combating of Corruption Act, 2007

The Prevention and Combating of Corruption (PCCA) Act, 2007 establishes the Prevention and Control of Corruption Bureau (PCCB), an organ mandated to handle all types of corruption incidents including those which are gender related such as demand or offer of sexual favors in exchange for official services.

<sup>30</sup> See: Kutta, Rwebangira and Baregu in LSRP (2012) Gender Assessment of Legal Sector Institutions in Tanzania. A report submitted to the Ministry of Constitutional and Legal Affairs, Dar-es-Salaam 2012.



## Section 125 of the PCCA states that:-

[a]ny person being of position or authority, who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or both.

This legislation has strengthened the legal regime on GBV by expanding the scope of sexual offences as provided in the Penal Code, Cap. 16. It is more explicit on abuse of power for the purposes of sexual exploitation. As stated above, the Tanzania Women Judges Association (TAWJA) has launched the 'sextortion' programme, which is aimed at stopping 'the abuse of power for the purposes of sexual exploitation in the public arena and in the society.' According to TAWJA the term 'sextortion' is defined to mean, the misuse of authority to sexually abuse others for corrupt purposes.

According to the Toolkit on Sextortion, the term 'sextortion' is a new terminology intended to give visibility to this common but hideous crime which often falls between the cracks. Part of it states that:-

"Because many of these cases are slipping through cracks in the law and not being brought out at all, giving them a name will make it easier to shine a light on the problem and take steps to redress the wrong. It is hard to conceive of much less discuss-matters for which we have no vocabulary. Naming the phenomenon –sextortion -will facilitate study, discussion, documentation, prosecution and ultimately elimination of the abuse of power to obtain sex.<sup>31</sup>

Indeed demand or imposition of sexual favours on subordinate staff or those who need a person in authority to exercise that authority in their favour either for services, employment, promotion, is a common complaint at work places and in the community at large.

For example a primary school student (in Zambia) asked her civics and history teacher for past papers several times. The teacher promised to bring them to her from home several times but made various excuses for 'forgetting' to do that. Eventually, the teacher invited her to his house to get the past papers. Unsuspectingly, the eager child went along and heeded the invitation of her teacher. To her surprise when she got there she was raped instead. She contracted a venereal disease and reported the incident to the school authorities. No action was taken. She reported to the police, no prosecution was preferred; both choosing to believe that it had been consensual sex. Eventually her relatives helped her to file a civil case against the teacher, the school, the Ministry of Education and the Attorney General. The court awarded her damages, for 'enduring psychological brutalization, among other remedies.<sup>32</sup>

The latter case involved a child and happened in Zambia. Such cases of abuse of power by adults in authority to obtain sexual favours from children have happened in Tanzania and some reached the courts of law. The famous case of Francis Nguza alias Babu Seya

<sup>31</sup> TAWJA (undated), *ibid*.

<sup>32</sup> See Rosaria Mashita Vs. Edward Hakasenke and Others, High Court of Zambia 2006/HP/0327 reported in the Case Law Manual, Tanzania Women Judges, Dar-es-Salaam (undated).



and his four sons<sup>33</sup> who were charged with eleven counts of raping and sodomizing eleven standard one pupils for several months in 2003 in Sinza, Dar es Salaam using threats to kill them if they refused or told anyone about it can be recalled here. Eventually, two of the charged perpetrators were acquitted while the first and second appellants were convicted and ordered to pay compensation to their victims and served long sentences in jail.

A study assessing the Legal Sector Institutions (LSI) under the Legal Sector Reform Programme (LSRP) coordinated by the Ministry of Constitutional and Justice Affairs found that users of legal services, particularly women, young men and the older poor found corruption to be an obstacles to accessing justice including sexual harassment meted against service users and employees in the legal system, 'demands for monetary and sexual favours as preconditions for obtaining bail<sup>34</sup> or favourable judgments or employment benefits.'<sup>35</sup> Among the catch points included transfers from rural to urban areas and vice versa where female employees were required to grant sexual favours to their district or regional supervisors in to get transfer to a good location or work station.

The PCCA addresses this situation head on by including in definition of corrupt actions, the demand for sexual favours by those in authority from their subordinates in the Section 125 as noted above. The coining of the new terminology of Naming and Shaming of Sextortion helps to the conceptualization of the abuse of authority for sex. The TAWJA Toolkit defines sextortion as:

...[c]onduct which is not only sexually abusive, but also incorporates the element of corruption. The sexual component need not be sexual intercourse or even physical touching. It could be any form of unwanted sexual activity, such as exposing private body parts, posing for sexual photographs, participating in phone sex, or submitting to an inappropriate touching. Sextortion does not include conduct of a non sexual nature.<sup>36</sup>

The elements of sextortion involve authority, corruption and sex, not money is the currency of the bribe. The second element is the abuse of authority to demand a sexual favour in exchange for service or favour implied in one's authority. The third element is psychological cohesion rather than physical force.<sup>37</sup>

## vii. Employment and Labour Relations Act, 2004

The Employment and Labour Relations Act (ELRA), 2004 makes provisions for core labour rights and establishes basic employment standards. Section 3 of this law links enforcement of the law to the Constitution of Tanzania (cited above) and related international labour instruments.

<sup>33</sup> See *Nguza Vikings @ Babu Seya and Others Vs. Republic* (CA) Criminal Appeal No. 56 of 2005.

<sup>34</sup> See for example the case of *Onesphory Materu Vs. Republic* (CA) at Tanga, Criminal Appeal No. 334 of 2009 where a police officer on duty at the police station raped a young girl of 14 years inside a police remand cell on a written promise that he would release her from custody. He also allowed her freedom to sit on a bench outside and get a glimpse of sunshine. When he refused to release her as promised, the girl filled charges giving the 'release note' as part of her evidence of the illicit unfulfilled promise.

<sup>35</sup> See: LSRP Gender Assessment of Legal Sector Institutions in Tanzania, Ministry of Constitutional and Legal Affairs, Dar es Salaam, 2012. Page 37.

<sup>36</sup> TAWJA Toolkit, *ibid*.

<sup>37</sup> TAWJA Toolkit, *supra*.





Specific on gender issues, ELRA prohibits discrimination on the basis of one's sex or gender role in Sections 7(1), (4) and (5), 20 and 33. Moreover, Section 7 of the law prohibits direct and indirect discrimination in the workplace including discrimination on the basis of sex, gender, pregnancy, marital status, disability, HIV/AIDS and age. Other gender related issues addressed in this law include; i) prohibition of harassment which is regarded as part of the discrimination (Section 7(5)); ii) prohibition of night work for pregnant women under certain circumstances (Section 20); and iii) guarantees of the maternity leave as a right for pregnant women and mothers. Fathers have also a right to paternity leave for three days (Section 33).

These specific gender sensitive provisions create an enabling environment to guide both employers and employees on appropriate boundaries so as to know when the line is crossed between execution of duties and persecution or sextortion. On the other hand, as it is stated above, the discrimination on the basis of sex, gender, marital status or family responsibility, disability, HIV/AIDS status, age and station in life is prohibited.

All these are critical gender roles and situations that people have in the society, whether they are employed or not. The fact that those who are employed in the formal sector employment are protected not to be discriminated upon them eliminates GBV engineered excuses such as denial of promotion, quid pro quo (this for that) exchange for sex. For example, a boss who threatens or pressures an employee who is pregnant or is a parent of a child that he/she will not get some employment benefit such as leave emoluments or health insurance on account of not being married unless he she agrees to his /her sexual advances would be infringing these provisions and also committing an offence under the ELRA.

These elaborations guard against sexual harassment or persecution in acknowledgment that child bearing is a social function and those who perform it should not be penalized for it or have their vulnerable condition ignored. This rationale is further explained by Section 33 of the ELRA which gives the details of when and how maternity leave is to be taken.

Although these rights are not in the criminal realm, they touch on important gender roles of parenting that their infringement or threat of infringement may amount to GBV. Thus the inclusion of these legal guarantees in the ELRA strengthens the national legal framework related to GBV.

### viii. Law of the Child Act, 2009

The Law of the Child Act (LCA), 2009 was enacted to, among other things, give effects to the international human rights instruments on the rights of the child<sup>38</sup> as well as the mechanism of unifying legislation providing for the rights of children, which were, in previous years scattered and contradicted to each other.

<sup>38</sup> On issues relating to, inter alia, protection from exploitative child labour, sexual exploitation, and separation from adults while in custody.



Moreover, the LCA came as an answer to the prolonged demand and advocacy of stakeholders in children's rights, concerned with the several often conflicting definitions and provisions of different legal sources with the same country.<sup>39</sup>

The LCA integrated the principles of the permanent best interest of the child as elaborated in the Convention of the Rights of the Child of 1989 and African Charter on the Rights and Welfare of the Child of 1990.

LCA has taken consideration of almost all issues related to the rights of children under the age of eighteen. However, it is silent about the marriage age at 15 years for a girl which is sanctioned by the LMA as stated above. Other laws recognize a person of this age to be a child. As argued earlier on, early marriages can have negative impacts on the long term prospects of girls. This is due to the fact that such tendency usually deters the girls from completing their education.

#### ix. HIV and AIDS (Prevention and Control) Act, 2008

The HIV and AIDS (Prevention and Control) Act, 2008 (AIDS Act) is of its kind. Tanzania became one of the first countries around the world to have a rather comprehensive and specific law on HIV and AIDS in 2008.<sup>40</sup> The law was preceded by the National HIV and AIDS Policy of 2001, which among other things, called for enactment of the specific law in order to enforce that policy.

AIDS Act provides a framework for prevention of the spread HIV infection as well as protection against stigma and discrimination of people living with HIV (PLWHA), treatment, care, support and control of HIV and AIDS, for promotion of public health.

With regards to GBV, it prohibits compulsory testing so that it is done only with the informed voluntary consent of the person concerned (Section 15). Exceptions to this general rule include a sex offender and under order of the court (Section 15(4)). The HIV test results are confidential and belong to the tested person. Therefore, an unauthorized release of information is prohibited and constitutes a criminal offence (Section 17). Exceptions to the confidentiality prohibition include the spouse of the tested person.

Further, the Court of law has power to order release of such test results in a case where it is deemed necessary to achieve the objectives of the law. The law also states that, the person who has been informed of a positive test has the duty to inform his or her spouse or sexual partner about the test results including specific information of the risk involved in having sexual contact with him or her (Section 21(1); to take precautions to prevent transmission of HIV infection to such spouse or partner (Section 21(2); abuse of spouse for compliance with these requirement is prohibited and constitute a criminal offence (Section 21(3)).

<sup>39</sup> See Rwebangira M. K and Liljestrom (eds) Haraka, Haraka...Look Before You Leap Youth at the Crossroads of Customs and Modernity, Scandinavian Institute of African Studies, Uppsala, Sweden; and Rwebangira. M and Mramba, R. 'An Updated Reference Document on the Policy and Legal Framework Affecting Children's Rights in Tanzania' a 2007 report submitted to UNICEF Tanzania Country Office, Dar-es-Salaam.

<sup>40</sup> LHRC (2009) Tanzania Human Rights Report. LHRC: Dar es Salaam. Page 57.



Despite such protections, the experience shows that, cases of married women being stigmatized and forced out of the matrimonial home on account of protecting the husband and other family members have been reported. Another most obvious challenge relates with proof of all HIV related cases. For instance, type of evidence to prove that one has willfully infects another with HIV.<sup>41</sup>

## x. Anti-Trafficking in Persons Act, 2008

The necessity of having a specific law on trafficking in person in Tanzania is justified by the global, regional and national trends of this staid offence. The international community, in particular, the UN considers this as a matter of serious concern.<sup>42</sup> Hence, a number of international instruments<sup>43</sup> have been adopted in order to tackle the issue of trafficking with increasing emphasis on human rights perspective from the angle of protection of the victims.<sup>44</sup>

Among those instruments, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2002<sup>45</sup> (Parlemo Protocol) is regarded as the most significant and comprehensive one.<sup>46</sup> The Tanzanian Anti-Trafficking in Persons Act, 2008 borrows a leaf from this instrument. That is, it has been enacted as a way of domesticating this Parlemo Protocol and others especially the CEDAW.<sup>47</sup>

Moreover, Article 4 of the Maputo Protocol provides that every woman shall be entitled to respect and the integrity and security of her person. It prohibits all forms of exploitation, cruel, inhuman or degrading punishment and treatment. It also describes appropriate and effective measures that state parties of the protocol shall take to protect the life, integrity and security of a woman.<sup>48</sup>

An implementation of this state (domestication of the international laws) obligation, as argued above, is discharged by the enactment of the Anti-Trafficking in Persons Act, 2008. However, since trafficking in person has much to do with exploitation of prostitution, particularly, prosecution and law enforcement practices that target female prostitutes and young males while leaving their clients provides fertile grounds for the kind of insecurity that may render an internally trafficked person vulnerable to "exportation" or remain trapped in sexually exploitative existence.

41 Note that, wilful infection of HIV to another person is a criminal offence under this law.

42 Meena, Anna (2014), *Ibid*, page 1.

43 These include, amongst others, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (the OPCC); and the Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (the OPSC), both adopted in 2002. See also the Rome Statute of the International Criminal Court which considers trafficking under enslavement (Quoted from: Meena, Anna (2014) *The Anti-Trafficking in Persons Act, 2008: Its Effectiveness in Combating Human Trafficking Offences in Tanzania*. LW 719 Graduate Essay for LL.M Program, University of Dar es Salaam: Tanzania. Page 2).

44 Muntarhorn, V (undated) *Combating Migrant Smuggling And Trafficking in Persons, Especially Women: The Normative Framework Re-Appraised: Migration and International Legal Norms*. Page 153.

45 The Parlemo Protocol supplementing the UN Convention Against Transnational Organised Crime, GS Resolution 55/25, ANNEX II, 55 UNGAOR Suppl. (No. 49) 60, UN Doc. a/45/49 1 (2001) was adopted in Parlemo, Italy, and at UN headquarters in New York until 12 December 2002.

46 Molema, N, *Combating Human Trafficking in South Africa: A Comparative Legal Study*. Thesis Submitted for the Requirement of Doctor of Laws. University of South Africa, 2013. Page 2.

47 For instance, Article 6 of CEDAW provides that 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.' [Emphasis supplied].

48 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force 25 November, 2005.



Note that, trafficking in Persons means the trade in human beings, most commonly for the purpose of sexual slavery, forced labor or for the extraction of organs or tissues, including surrogacy and ova removal.<sup>49</sup> Moreover, Article 3(a) of the UN Convention against Transnational Organized Crime<sup>50</sup> defines trafficking in person to mean:

*[T]he recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.*

The definition brings new elements such as forced labor, forced marriage, child labor and exploitation of children some of which are not adequately addressed in Tanzanian legal framework on anti-trafficking in person.

The trafficking usually involves the removal of people from their homes and especially home countries, deceitfully promising a better life or forcefully and threat of violence to them or their families. Once isolated the victims are subjected to slavery existence, abuse and all sorts of cruelty, with no travel documents or money to live independently or return home.

Now going to the practicability of it, Tanzania has been named as one of the African source and transit countries. The Gender Assessment of the Legal Sector Institutions found the Tanzania Female Police Network was handling cases of young women trafficked from Tanzania who were stranded in Tanzanian embassies abroad after being rescued. Some of these women did not know how to trace their families in Tanzania.<sup>51</sup>

The record shows that trafficking elements have been criminalized in Tanzania during colonial times in 1954. However, elements of anti-trafficking in persons were reintroduced by SOSPA in 1998. It introduced a new Section 139 in the Penal Code, Cap. 16 which deals with procurement for prostitution.<sup>52</sup> Further, a new Section 139A was introduced by SOSPA to specifically address Trafficking. The said new section describes what trafficking is and makes it an offence punishable by imprisonment for no less than twenty years and not exceeding thirty years.

Due to the reasons stated above, the issue of trafficking was extensively elaborated in 2008 through the Act of parliament cited above. The anti-trafficking law places definitions, penalties, and protection of victims under one legal umbrella. Penalties are directed at those trafficking persons but also for facilitating human trafficking.

49 United Nations Office on Drugs and Crime (UNDOC) On Human Trafficking and migrant smuggling. <http://www.unodc.org/unodc/en/human-trafficking/> accessed on 20 November 2013.

50 G.A Res 55/25 of 2000. In its preamble, the Convention calls upon State to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly Resolutions, and to apply the United Nations Convention against Transnational Organized Crime in Combating all forms of criminal activity, as provided therein.

51 See: Kutta, Rwebangira and Baregu in LSRP (2012) Gender Assessment of Legal Sector Institutions in Tanzania. A report submitted to the Ministry of Constitutional and Legal Affairs, Dar-es-Salaam 2012.

52 That section describes what procurement for prostitution is and makes it an offence punishable by imprisonment between ten and twenty years.



As for the enforcement status of this law, same analysis by Meena (July 2014, cited above) shows that, Tanzania had at least 350 persons trafficked between 2007 and 2014. The IOM's report of 2012<sup>53</sup> which is cited in Meena (2014) shows that, there were 366 persons trafficked as of August 2012. The police report of July 2014<sup>54</sup> shows that, there were 383 persons trafficked between 2007 and 2014 to and from Tanzania. According to the police report, majority of who are trafficked are males for adults (98.1%) and girls for children (91.6%). The main reasons for trafficking mentioned to be employment, sexual exploitation and witchcraft. The IOM's report clarifies further that, persons aging between 14 and 18 seems to be more victims of the circumstance. This age group account for more than 75% of persons trafficked between 2007 and 2014. Furthermore, the IOM report reveals that, at least 95% of those who are trafficked are actually persons who are either in primary school or primary school leavers.

The two report quoted from Meena (2014) imply that, income poverty and level of education are main attributing factors causing vulnerability for trafficking to happen. It is unfortunate situation that Tanzania does not have a specific policy of anti-trafficking which would have addressed the intrinsic links between these factors and law enforcement in order to prevent and not control the occurrence of the problem.

Furthermore, Section 25 of the anti-trafficking law provides for the 'Anti-Trafficking Fund.' According to Meena (2014), there has not been any budget allocated from the government for the said Fund. The Ministry of Finance do not allocate fund for the Anti-Trafficking Committee and the Anti-Trafficking Secretariat. Same source speculated that, non-allocation of funds from the Ministry could be attributed by non-completion of the regulations. Such regulations are intended to provide the guidelines on the allocation and utilization of the funds.

That has a negative implication in the sense that it makes implementation of the law on the part of providing basic material needs to of victims of trafficking in persons, for the training of victims of trafficking in persons, for tracing the families of victims of trafficking in persons and for any matter connected with the rehabilitation and re-integration of victims of trafficking as provided under Section 27 (a) to (c) being ineffective.

As a result of those and so many other factors cited in Meena (2014), there have been very few cases investigated, prosecuted, tried and decided so far. Some of those few cases are Republic Vs. Nathan Mutei Mwashu<sup>55</sup> and Republic Vs. Salim Ali.<sup>56</sup>

53 IOM 'Trends of Human Trafficking in Tanzania: Statistical Evidence.' Presented During the Workshop on Victims Protection and Prosecution of Traffickers at JB Belmont Hotel, Dar-es-Salaam, on 15th to 16th August, 2012.

54 Police Force of Tanzania 'Matukio ya Usafirishaji Haramu Binadamu kwa Kipindi cha Kuanzia 2007/2010 – 2013/2014' ('Incidents of Human Trafficking from 2007/2010 – 2013/2014'). It was obtained as a spread sheet from the Police Headquarters – Dar es Salaam, July 2014.

55 Criminal Case No. 672 of 2010, Resident Magistrate Court, Mwanza. The case came before Honorable Rumisha, the Resident Magistrate. The person in this case, was charged on trafficking a person contrary to Section 4(1)(g)(i) and (5) of the Anti-Trafficking in Persons Act, 2008; and abduction of a person in order to murder contrary to Section 298 of the Penal Code.

56 Criminal Case No. 61 of 2012, Judgement of 28th November 2012. In this case, the Court convicted Salim Ali of forced labour, a crime of human trafficking. One of the question that the court had to answer was what is human trafficking and what are the ingredients of this offence? The court was of the view that, the Anti-Trafficking in Persons Act, 2008 does not define human trafficking but itemizes the elements of the offences. The court concluded that Section 4(1) of the Anti-Trafficking in Persons Act, 2008 provides seven categories of human trafficking whereby the accused is charged under section 4(1)(a). Under this Section, it is an offense for any person to recruit, transport, transfer, harbor, provide or receive a person by means, including those done under the pretext of domestic or overseas employment, training or apprenticeship, for the purpose of



## (ix) Customary Law Declaration Order, G.N 279/ 196357

The Customary Declaration Order of 1963 is set of codified customary rules derived from various tribes. This order provides for rights and duties associated with marriage, divorce and inheritance. For instance, Paragraphs 62-70 of this Order provides that a widow can be inherited by a relative of the deceased husband. The same paragraphs oust of the rights of the widow over custody of her children. The Paragraph 1-53 of the second schedule to this Order provide for the rule of inheritance which as basically discriminatory. Note that, the enactment of recent laws, in particular, the land laws of 1999 did not rectify this situation.

Furthermore, Paragraph 74 states that a husband shall pay maintenance to his former wife only if the husband was a cause of the marital breakdown. Paragraph 71A covers issues relating to divorce. It states that upon divorce, a pleasant wife is entitled to only ¼ shares of agricultural crops in the year of her divorce. This assumes that divorced women would re-marry or be taken care by their family. Therefore, the Order does not recognize a joint ownership of property during the subsistence of marriage. There are so many other bad provisions of this Order. These are just a few of them.

Almost everything contained in this Order contravene the rights of the women and girls. It codifies customary norms of Tanzanian tribes which most of them discriminate against women and children. It is time that a whole of this piece of legislation is overhauled or deleted from the statute books as the current circumstance renders it unfit and invalid.

TAWLA agrees with the Legal Aid Secretariat (LAS) that, If Tanzania wants to retain applicability of customary laws in the judicial system, then it has to be clearly stated that, the application of such laws should not be in consistence with the Constitution; and of course, the Constitution itself should incorporate provisions which will guarantee strong protection and enforcement of the rights of women and other vulnerable groups. This can be part of the advocacy of the ongoing constitution making process.

It should be noted that, this piece of legislation has been subjected to a litmus test of a strategic litigation (case) to challenge its constitutionality and violation of international human rights treaties. This case was filed in the High Court of Tanzania at Dar es Salaam by WLAC in 2005. The case focused on the customary norm of intestate succession as embodied in the 1963's Order (2<sup>nd</sup> schedule, G.N 436). The judgment of the said case was delivered on 8<sup>th</sup> September, 2006. WLAC lost in that case and it is now pursuing it through international forums (not relevant to be discussed here).

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prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage. The court further affirmed that the accused person trafficked the victim to Yemen for forced labor, the victim worked in difficult conditions with terms of no work no food, their passports being confiscated, being employed without contract outlining the scope of their work. The court convicted the accused person and sentenced the accused to pay a fine of seven million (Tshs: 7,000,000 being USD: 4,243) or a jail term of ten years.

57 A whole of this analysis is copied from: LAS (2013) Status of Ratification of the Laws which Impede Gender-Related Rights in Tanzania. Legal Aid Secretariat (LAS): Dar es Salaam. Pages 22 and 23. The analysis was made by Adv. Clarence KIPOBOTA who was an editor of this (TAWLA's) Report.



## (x) Land Act and Village Land Act of 1999

Section 161 of the Land Act, 1999 is on presumed interest of spouses in land. This provision is not well implemented. If implement it would reduce if not end the problems which widows are facing by being evicted from the matrimonial especially in urban areas.

Moreover, Section 22(1) of the Village Land Act, 1999 which provides for group registration of a family unit in the village is not well known because if it was it is a good opportunity for women to acquire legal rights in village land which would put them at par with male family members and save them from the requirement to be inherited by the male relatives of the deceased husband in order to maintain their interest in land.<sup>58</sup>

### (xi) Inheritance and Succession Laws

The legal regime on inheritance and succession in Tanzania is pluralistic in nature, whereby customary, Islamic, statutory and Hindu laws apply side by side. This means that the law is not unified. All these laws provide for both testate and intestate successions. The two determinant factors as to which system of law shall apply are ethnicity and religious affinity. If the deceased is of African descent, customary law shall apply but only if he is not also a Muslim.

- **Customary Law – Inheritance Aspect Only**

With particular regard to gender equality, the inheritance law regime of customary law as stated above, favours men and especially first born males who get the lion's share of the estate. Women can inherit if there are no male offspring or when there is plenty to go around. In the latter case, women can inherit only as daughters from the father's estate and not as wives from their husbands.

Moreover, even when there is enough assets to be shared women are allowed to inherit in the third degree, after first born sons and all other sons, has had their shares. Women as wives have no right of residence in the husband's family unless there are no sons by any wife or out of wedlock and no surviving male relatives.

A widow has a choice to be inherited by a relative of her deceased husband's and become his wife, or claim the right to remain with her issue in a house of the deceased and thus become one of the deceased's kinsfolk or go back to their natal family.<sup>59</sup> Children born out of wedlock are not entitled to inherit from their father unless they have been legitimized and recognized by the said father's clan or family.<sup>60</sup>

<sup>58</sup> See Rwebangira, M.K 'Assessment of the Impact of the Land Fomalization Pilots on Women under Village Land Act, 2002'. Norwegian People's Aid, Dares-Salaam, 2008.

<sup>59</sup> Rules 27 and 66A of the Customary Law Declaration Order of 1963.

<sup>60</sup> This rule has been modified by the Law of the Child Act, 2009.



- **Islamic Law**

Islamic law applies to all Muslims of any ethnic or racial descent domiciled in Tanzania. The general rule is that a Muslim cannot dispose of more than 1/3 of his estate by the Will. Everything about this matter is governed by the Holy Quran as said earlier on.

According to Islamic law a daughter inherits half of the son's share, while widows are entitled to 1/6 of the estate. Often the problem is quantification of the exact proportion of one sixth of the estate. In practice, both Islamic and customary law regimes are significantly influenced by the customs of the people concerned. Nonetheless, the legal test as to when an estate is to be subject to customary law or not is the mode of life under which the deceased conducted himself. If it can be shown that he/she had abandoned customary law, then such a law could not be invoked to address a particular inheritance issue. As for the Islamic law, the test is the intention of the deceased. If by his conduct it can be shown that he intended that Islamic law should not apply to his estate on his demise.<sup>61</sup>

- **Statutory Laws**

The statutory laws include the Indian Succession Act, 1865 which is in effect codified English law. It applies to estates of foreigners domiciled in Tanzania. Others are the Non-Christian Asiatic (Succession) Act, Cap. 112 which applies to non-Christian Asians but who are not Muslims.

This legal regime has been the subject of much agitation from various sectors and stakeholders for many years including the CEDAW Committee.<sup>62</sup> The civil society has filed a public interest litigation test case on behalf of two Sukuma tribe widows who have been affected by the current regime of inheritance in *Elizabeth Stephen & Salome Charles Vs. Attorney General*,<sup>63</sup> which is now pending in the Court of Appeal of Tanzania.<sup>64</sup>

## 2.2.2 Comparative Study in Africa on Domestic Violence

- **Domestic Violence in Ghana among the Educated and Financially Independent**

One Amoakohene<sup>65</sup> conducted a study titled as 'Violence Against Women in Ghana: A Look At Women's Perceptions and Review of Policy And Social Responses.' The aim of the study was to address domestic violence among the educated and financially independent women in Ghana. The scholar looked at women's perceptions of violence against women. Her study reviewed policy and social responses. She found that educated, employed and married women in Ghana do experience domestic violence although many of the categories reported fell within types classified elsewhere as 'less sphere.'

61 See the cases of *Innocent Mbilinyi deceased* (1969) HCD 283; and *George Kumwenda Vs Fidelis Nyirenda* (1981) TLR 211.

62 See the Concluding Observations of the CEDAW Committee of 6th Periodic Country Report to CEDAW, 2008.

63 High Court in Misc. Civil Cause No. 82 of 2005.

64 As Civil Appeal No. 4 of 2007, Court of Appeal of Tanzania.

65 Jewker, R. et al. (2002) Risks Factors for Domestic Violence. Findings from a South African Cross – Sectional Study. *Social Science and Medicine*, 15: 1603 – 1617





However, Amoakohene<sup>66</sup> concluded that the impact of violence on educated and financially independent women was mainly psychological and emotional with likely health implications such as depression, palpitations and hypertension. In that study, 70% of the women interviewed reported at least one form of violence mostly of the nature of physical abuse by the husband e.g. being slapped, hit, beaten or kicked by their husbands. However, they downplayed their experiences of violence in their homes as normal. Moreover, they refused to discuss sexual violence in marriage. The author concluded that the concept of sexual violence such as marital rape is unknown to Ghanaian culture.<sup>67</sup>

Non-physical abuse such as excessive control, verbal attacks or insults and threatening behaviour by the husband was reported by all the respondents in the study who had experienced violence in marriage (35 out of 50). What the women said hurt most was being insulted by husbands in front of their children. Others mentioned suspicion and 'close marking' by husbands when they left the house as hurtful. The economic disempowering acts were perceived as domestic violence by 10% of the respondents in the study. This was manifested as arguments over maintenance ('chop money') for household upkeep including caring for the children.

These women working outside the home to earn an income considered it unfair that they should assist their husbands in their traditional role of providing for the family while the men insisted on their wives' traditional responsibility of taking care of the home and children alone. The fact that women worked full time had not stopped them from performing their role as wives such as cooking, cleaning and washing. These contradictions sometimes ended in quarrels over household budgets and expenditure or suffering in silence to avoid further physical or verbal violence.

Amoakohene concluded that irrespective of any physical injuries, psychological abuse negatively affected women.<sup>68</sup> Further, although the women felt free to discuss their abuse conditions in the home except sexual aspects, they were reluctant to seek help from either the government or other official actors. None of the respondents had sought such help despite the fact that they were aware of the sources of formal assistance.

- **Domestic Violence in Swaziland: the Gendered Difference**

The Women and Law in Southern Africa (WLSA) study in Swaziland entitled, 'Multiple Jeopardy, Domestic Violence and Women's Search for Justice in Swaziland,' also looked at domestic violence.<sup>69</sup> The study started in 2001 from the Declaration by the Heads of State of the Southern Africa Development Community (SADC) on Prevention and Eradication of Violence against Women and Children as a positive realization that elimination of all forms of discrimination including violence was a 'tool' to sustainable development of any nation.

<sup>66</sup> Amoakohene, M.I. (2004) Violence against Women in Ghana. A Look at Women's Perceptions and Review of Policy and Social Responses. *Social Science & Medicine* 59 (2004) 2373 – 2385.

<sup>67</sup> Amoakohene *ibid*, Pages 2373 – 2385.

<sup>68</sup> Amoakohene *Op cit*, Page 2373 – 2385.

<sup>69</sup> Women and Law in Southern Africa (WLSA). (2001) Multiple Jeopardy: Domestic Violence and WLSA, Mbabane Swaziland.

Women's Research for Justice in Swaziland.



One of the findings of that study was that non-sexual physical assault by an intimate partner was very common in Swaziland. So was femicide (death of a woman from gender based violence). The survivors of violence reported that domestic violence was cyclic in nature; beginning with the tension phase followed by a violent incident phase ending with the honeymoon phase in which usually the male partner would show remorse for his actions and act kindly only to drift back to tension again and repeat the cycle.

Further, it was observed that sexual physical violence was also a common form of domestic violence in Swaziland. Such incidences included incest, rape and marital rape. Further, emotional abuse was found to be common among intimate partners. For example, women considered it to be an abuse of the highest order when one moment one is inflicted with physical pain or labeled as inadequate and other such humiliations and yet expected to happily yield to marital intimacy at the same time. A similar resentment was expressed by the respondents in the Ghanaian study.

Unlike in Ghana, men also participated in the Swaziland study. They too complained of GBV perpetrated by women in the form of emotional abuse particularly nagging at night when they least needed arguments. The study observed that this perception by male respondents may be indicative of the different gender perceptions in relationships. While men would rather ignore a problem or at most evade the issue in the hope that it would go away with the passage of time, women prefer to take on issues head on and resolve them amicably.

The Swaziland study noted that domestic violence is an area where both genders have their share of responsibility because both men and women commit acts of violence and are sometimes victims of GBV. However, apart from 'nagging,' the study found that when women committed acts of domestic violence against intimate partners, it was in self-defense. This is an important observation in the light of recent studies that have argued that violence against males is high especially in Tanzanians as it is already highlighted above in this report.

- **Domestic Violence in Tanzania and Younger Women are More Tolerant of It than their Male Peers**

As it is already stated under Paragraph 1.3 of this report, the TDHS of 2010 shows that about 44% of the ever-married women age 15 and 49 experienced physical or sexual violence by an intimate partner.

The National VAC Survey Report of 2009 further revealed that, the most common type of childhood sexual violence was unwanted touching (16% and 8.7% of females and males, respectively) followed by attempted unwanted intercourse (14.6% and 6.3% of females and males, respectively). Almost 6.9% of girls and 2.9% of boys were physically forced or coerced into sexual intercourse before the age of 18. About one half of girls and two thirds of boys do not tell anyone about their experience.

Furthermore, over 60% of girls give family or community reasons (with the most common reason being fear of abandonment or family separation) for not telling, while another



26% give personal reasons. For boys, 58% give personal reasons (with the most common reason being not thinking it was a problem), while 36% give family and community reasons.<sup>70</sup>

Moreover, the VAC survey showed that only about 1 out of 5 girls and 1 out of 10 boys seek services after their experience of sexual abuse. Of those, only 1 in 10 girls and 1 in 25 boys who experienced sexual violence received services. About 16% of girls and boys would like additional services, including counseling and police or social welfare support.

A quick analysis of the perceptions of women and men shows that not only are women more likely to accept violence against themselves but also more likely to find it justiciable than men in the same social group. This is a disturbing finding. But another even more disturbing finding from the analysis of this secondary data is the fact that younger people in both sexes perceive domestic violence as a justiciable method of maintaining a workable relationship between men and women.

### 2.1.2 Some Factors behind Weak Legal Framework on GBV

Despite strong legal provisions, there are a number of glaring gaps in the laws as discussed above. The government of Tanzania admits that GBV is a serious problem in Tanzania. In her statement to the CEDAW Committee in July, 2008, the then Minister for Community Development, Gender and Children, Hon. Margaret Simwanza Sitta stated as follows:

[V]iolence against women continues to be a serious problem in Tanzania. Physical and sexual violence, as well as economic, psychological and emotional abuse occur in families and communities in such forms as threats, intimidation and battery, sexual abuse of children, economic deprivation, female genital mutilation and sexual harassment.<sup>71</sup>

However, despite the acknowledged challenge, the national legal framework continues to lag behind to address all those challenges which have been discussed above. This is why the Women's Legal Aid Centre (WLAC) in its Shadow Report of 2007 presented to CEDAW by, remarked that '...violence against women is not recognized as a serious problem that needs serious government attention.'

While the government has, in collaboration with civil society, made efforts to create public awareness, sensitize the police, the media on the ramifications of GBV its consequences to women, children, their families and society as a whole through campaigns such as the '16 Days of Activism', the legal framework remains inadequate to support effective programme addressing GBV.

For instance, as stated above, Tanzania's legal framework does not define GBV comprehensively. However, the Constitution expressly imposes a duty upon 'every

<sup>70</sup> All this information is quoted from the URT, National Guidelines for the Integration and Operationalization of One Stop Centers for GBV and VAC Services in Health Facility. MoHSW and MoHA. Government of Tanzania. Page 1.

<sup>71</sup> URT, Statement of the Minister for Community Development, Gender and Children to the CEDAW Committee in New York on 1 July, 2008. Quoted from LHRC (2008) Tanzania Human Rights Report of 2008. LHRC: Dar es Salaam. Page 62.



person' a duty to 'observe and abide by this Constitution and the laws of the United Republic.'<sup>72</sup> Furthermore, 'every person has the right' . . . to take legal action to ensure the protection of this Constitution and the laws of the land.'<sup>73</sup> Every person has a duty to respect women's rights, and it is the duty, and authority of the government to enforce such rights and to prohibit GBV.

## 2.2 Policy Framework on GBV – Including Strategies and Plans

Policies spell out the national strategic direction from which sectoral implementers usually derive legitimacy and mandate including laws. Tanzania has a number of policies and strategies some of which are quite specific and comprehensive on GBV. However, as this analysis could point out from this outset, that:

- a) There is a loose connection between the policy and legal frameworks. The two sides do not correspond to each other as it is further discussed below; and
- b) That, apart from having comprehensive articulation of the gender problems, most of the Tanzanian policies and strategies do not, among other weaknesses, suggest viable strategies for eradicating negative discrimination against women and girls.

Some of the relevant policies, strategies and plans on GBV in Tanzania are (not arranged in any chronological order):

- i) National Strategy for Gender Development of 2005.
  - ii) Women and Gender Development Policy of 2000.
  - iii) National Policy on Research and Development of 2010.
  - iv) National Economic Empowerment Policy of 2004.
  - v) Rural Development Strategy of 2001.
  - vi) National Cultural Policy of 1997.
  - vii) Policy on Women in Development in Tanzania of 1992.
  - viii) Community Development Policy of 1996.
  - ix) National Employment Policy of 1997.
  - x) National Plan of Action for Prevention and Eradication of GBV against Women of 2001 -2015.
  - xi) National Strategy for Growth and Reduction of Poverty (NSGRP II) of 2010.
  - xii) United Nations Millennium Development Goals of 2000.
- (i) **National Plan of Action for Prevention and Eradication of GBV against Women of 2001 -2015**

The principal policy on GBV is the National Plan of Action for Prevention and Eradication of Gender Based Violence Against Women of 2001 -2015. This policy was rolled out by the Ministry of Community Development, Gender and Children in 2000 and it is the blue print guiding national efforts on GBV. The vision of the National Plan of Action is to 'have a society free of physical, psychological, emotional and sexual violence against women and children by the year 2015.' Its goal is to 'have sustainable equality and equity between women and men in Tanzania and

<sup>72</sup> Article 26 of the Constitution of the United Republic of Tanzania of 1977.

<sup>73</sup> Article 30(3) of the Constitution of the United Republic of Tanzania of 1977.



to provide a framework of actions to be undertaken by stakeholders to prevent and eradicate violence against women and children.'

The areas to be addressed to prevent and eradicate gender based violence relate to legal; social, economic; cultural and political; the services and education, training and awareness building. In the area of legal issues it specifically targets the existence of discriminatory legislation against women and children, which have been discussed above.

The Action Plan identifies the several challenges and proposes the following; a) a need to amend discriminatory legislation; b) to popularization of Penal Code, Cap. 16; c) to enhance good governance; and d) to address a challenge of legal illiteracy. Among the immediate objectives proposed by this Plan are; a) to amend laws that directly affect women and children's rights' and to adopt legislative measures to ensure the protection and removal of all forms of discrimination against women and children. However, as of September 2014 when this report was fine-tuned, nothing about these objectives was put into motion. Some bad laws discussed above were still operational while it is only three months away from the deadline set by the Plan.

The problem statement of the Plan of Action identifies cultural norms, values, traditional practices and customs which place women in subordinate positions in social, economic, cultural and political spheres of life, discrimination against women and children as the cause of GBV. Further, that on the secondary level these 'traditional values and norms influence planning practices,' which to a greater extent constrain efforts to meet the gender needs of women. Other areas which are identified as problematic are the election procedures and appointment processes, of women to high positions which also prevent women from participating in decision-making processes, as a result of which very few women were found in high decision making positions.

With this clear vision, mission and problem statement, the National Action Plan on GBV notes two major challenges to its success. These are gender insensitive people both women and men, policy makers, planners and the media; and poverty (women and children). The sectoral policies indicated below provide very little about these; and that, the Plan itself fall short of viable plans and performance indicators to ensure that its objectives are really implemented.

## (ii) National Economic Empowerment Policy of 2004

The policy states one of the reasons of continued poverty (which is gender issue) among Tanzania is lack of effective participation of ordinary Tanzanians into modern economy include lack of capital; limited entrepreneurship and experience in managing business; and lack of credit.

Paragraph 4.2.2.1 of the policy cast blame to the current legal framework for being inadequate on the aspect of the economic empowerment of the poor, majority of whom being women and youths. Paragraph 4.3.1 states that, many Tanzanians are



not 'creditworthy' due to lack of collaterals. Despite the fact that the policy does not specifically mention women and youths as main targets of this policy articulation, the experience shows that majority of them (women and youths) especially in rural areas do not possess or control valuable assets such as land which would have been used as collaterals for them to acquire capital as part of economic empowerment.

Moreover, despite the fact that there is no a specific provisions on gender issues. However, the policy impliedly touches upon several gender issues including:-

- Linkage of lack of capital with lack of collaterals which mostly affect women as they do not own assets.
- Presence of inhibitive customs and traditions limiting knowledge on market issues. The traditional norms adversely affect women than men.
- Lack of economic empowerment laws whereby most of the current laws still undermine women's efforts in all spheres of life including economic activities.

### (iii) National Policy on Research and Development of 2010

The statements on GBV are too general and insufficiently address gender issues. Not only that gender is a theme needing to be researched in its own right but view of tackling gender inequalities but also where applicable, applied research should address impacts on women and men given the differently constructed gender roles.

### (iv) National Strategy for Gender Development of 2005

The National Strategy for Gender and Development of 2005 'blames' the current legal framework as one of the main obstacles towards gender equality. Paragraph 1.4 states that, the efforts to promote gender equality and equity encounter several challenges including presence gender insensitive legal and policy framework. Paragraph 2.1.6 mentions other obstacles towards gender development of women to include low level of women's education; traditional and reproductive roles.

Furthermore, on economic part of it, which is regarded as one of the main emancipation tools, this Strategy states that, rural and urban women fail to develop economically because majority of them mostly engage in small scale businesses in informal sector. Just like the way in which their reproductive roles are not valued, their informal activities lead them into low productivity, persistence poverty and low social status – all which make them vulnerable for GBV.

Like other strategies, plans and policies, this too fails to suggest viable solutions to rectify the situation. Moreover, it does not provide any direct link between different economic sector policies such as on micro-finance; small and medium enterprises; and trading. There is also no a direct link between MKUKUTA II; Tanzania Development Vision 2025; MDGs; Plan of Action for Prevention and Eradication of GBV (cited above); etc. As such, what have been articulated in this Strategy really remains hanging and unenforceable.



## (v) Rural Development Strategy of 2001

Paragraph 3.3.2 of the Rural Development Strategy of 2001 appreciates the fact that women as one of the gender groups are the majority in Tanzania. The document states that 51% of the nation's population is female. 14% of rural households are female headed, and an estimated 45% of these households live in poverty. Women in general and rural women in particular, are disadvantaged in terms of access to social services and gaining entry into productive economic activities. As a result, they remain poor and insecure who could not battle do demand and defend their interests. The Strategy proposes rural-urban linkages of services (among other things). But same challenges of lack of viable solutions and enforcement of the proposed solution appear to be a case for this document as well.

## (vi) National Cultural Policy of 1997

The Cultural Policy is silent about bad cultural practices that perpetuate discrimination against women and girls. The policy has addressed the aspect of recreation superficially. This is an area which is engaging many youth today where there are specific issues pertaining to women and girls which need to be tackled such as sports. In sports for example, there are fewer women and girls who participate. Also, the areas of drama, acting, and music are fairly new in the country but engaging many youth especially in the urban areas. The working environment is highly competitive. However, women and girls face challenges to compete effectively with men in negotiating with producers.<sup>74</sup> Competitive environments are fertile grounds for sexual harassment and exclusion. This is an area which needs close follow-up from a gender perspective in order to provide for equal opportunities to both women and men.

Another issue is the cultural values that are being imparted in the entertainment industry. Themes and drama plots that exhibit fathom violence on people have negative effects on views especially the young population. So does pornographic movies and drama which demean women. The Human Development (HDT) Study above reported an interview on television on 12/4/2011 where an artist who was being interviewed on TBC1 channel commented that prostitutes have invaded the acting profession "... the increasing number of prostitutes who are invading the acting profession because prostitution is not paying well..."<sup>75</sup> This needs validity. However, in revising this policy, consideration should be made to incorporate all matters pertaining to culture.

The Cultural Policy alludes to good customs and traditions which are to 'be identified, enhanced and utilized in molding peaceful, respectable and harmonious nation.' However, it does not address itself to those traditions and customs that are harmful and violate the fundamental freedoms and rights of people including women and girls such as early marriages, FGM, polygamy, payment of bride wealth/price, wife beating, unequal division of property and discriminatory inheritance laws and practices. The latter are some of the bad traditional practices that have negative implications to the wellbeing of girls and women. By and large harmful traditional

<sup>74</sup> See: Gaps in Policies and Laws that Perpetuate Gender Based Violence in Tanzania. Human Development Trust, Dar-es-Salaam, June 2011.

<sup>75</sup> Human Development Trust, *ibid*.



customs promote gender inequality by giving men more power over women and exacerbate GBV.

Another statement of the policy states that: 'Parents and society at large shall be encouraged to respect values and good traditions and customs of child upbringing.' While it is true that traditional customs are a rich source of good values especially in child upbringing there is a rich reservoir in culture. However, there is the danger of romanticizing the past, some of which were violated the fundamental rights of members of its community such as women and children.

Moreover, the conditions for some of the many good aspects of traditional customs of child upbringing such mutual dependence with the extended family have long been eroded by the advent of a cash economy, religious penetration and western education such that its conditions cannot be recreated mutatis mutandis in modern Tanzania.

The policy statement does not recognize the fact that culture do change over time as the context changes, so does the needs. Culture has to serve the common good of its people and therefore has to affect the upbringing of its children. Values however, can be maintained as long as they remain relevant and adopt accordingly.

(vii) Small and Medium Enterprise Development (SME) Policy of 2002

Paragraph 5.7.2 of the SME policy makes it clear that women are a significant part of the Tanzanian labour force and as such any meaningful development effort must mainstream women. Unfortunately, they have less access to productive resources such as land, credit and education due to cultural barriers. As such, it is clear that men and women stand on uneven ground and thus the need for specific measures for promoting women entrepreneurship. The same applies to youth and people with disabilities.

Due to these facts there is a need to rectify the situation by facilitating their involvement in the economic activities through participation in the SME sector. Efforts have been taken to rectify the situation. They include enactment of the land and disability laws. However, as it has been argued above, such laws still contain some loopholes which perpetuate existence of inequality amongst the gender groups. The presence of harmful laws such as the Customary Law Declaration Order of 1963 makes the situation more complicated. The beauty of this policy would remain a 'show-case' until when the legal framework is refined as proposed above.

(viii) National Employment Policy of 1997

The National Employment Policy of 1997 contains a deep analysis of the attributing factors to unemployment and makes several strategic recommendations. For instance, paragraphs 4 and 5 seek to address self-employment challenges including; i) unorganized markets; ii) lack of capital and loan procedures; iii) little experience in managing business; iv) lack of inborn norms for self-employment.





Paragraph 10 of this policy proposes some of the recommendations to address the problems articulated in aforementioned policy paragraphs. Sub-paragraph 6 of paragraph 10 mentions that, the government will facilitate: i) provision of vocational trainings; ii) offer technical advice; iii) start special funds to grant loans for self-employers; iv) remove all discriminatory laws against women and other special groups.

Despite the fact that the policy seems to be exhaustive of the challenges pertaining employment issues, it has, however, failed to provide a link between gender and unemployment factors, which are predominantly manifested in the informal sector.

The importance of considering the gender aspects in informal sector cannot be overemphasized. As stated earlier on, majority of the players in both rural and urban-based informal activities are women because they are not in control or access to means of production and valuable assets to facilitate them opting for better choices.<sup>76</sup> This renders inferior and vulnerable of GBV attacks. That is, the gender-based constraints have contributed to the weak response (by women) of economic empowerment opportunities in many African countries. According to Joeques,<sup>77</sup> the distribution of gains from economic activities is also highly inequitable in gender terms. The formal and informal systems of economy are unequivocally favoring men over women.

On the other hands, due to the same cultural limitations, majority of women fail to do profitable economic productivity (being formal or informal ones). As a result, the women who work as informal producers or suppliers or traders found themselves into myriads of setbacks ranging from policy, legal and institutional to practical appearances.<sup>78</sup> For instance, the Tanzanian legal and policy frameworks do not recognize informal sector as one of the drivers of both micro and macro economy.<sup>79</sup> This is why it is argued that, the National Employment Policy of 1997 does not cover the aspect of gender and economic informality.

<sup>76</sup> Kipobota, Clarence (2014) Constraints and Opportunities of Mainstreaming Informal Sectors Practices in Policy Framework - Tanzania. Masters of Science in Public Policy Analysis (Msc. PPA), Ardhi University: Dar es Salaam. Page 6.

<sup>77</sup> Joeques, Susan 'Gender, Property Rights and Trade: Constraints to Africa Growth', In, Keneth King and Simon Mcgrath (Eds.) (1999) Enterprise in Africa – Between Poverty and Growth. IT Publications: London. Pages 51-53.

<sup>78</sup> Levacic, Rosalind (1997) Economic Policy-Making. Wheatsheaf Books: Sussex. Pages 100-105.

<sup>79</sup> EfG 'Report on Female Market Traders, Dar es Salaam, Tanzania of 2009.' EfG: Dar es Salaam. Pages 15-18. Note: 'EfG' (Equality for Growth) is a Tanzanian based NGO which focuses on the rights of petty traders in the (informal) markets.



## **CHAPTER THREE:**

### **DISCUSSION ON STATUS OF TANZANIAN INITIATIVES TO RESPOND TO GBV**

#### **3.0 Introduction**

This Chapter discusses Tanzania's success, gaps and challenges in its initiatives to respond to GBV through various stakeholders engaging themselves at the national level. The chapter is composed of two main parts. Part one covers successes by the government; civil society organizations (CSOs); and other stakeholders in regard to a war against GBV; and part two discusses the challenges facing various actors in relation to the prevention and eradication of GBV.

#### **3.1 Successes and Achievements of Anti-GBV Initiatives**

The success like failure is a conceptual issue. One cannot talk about arriving without having declared where he or she was going, at least to oneself or partners in the same journey. In the same manner, to discuss, not evaluate success in response to GBV, we need to proceed from set benchmarks. For the purposes of this study, the National Plan of Action for the Prevention and Eradication of Violence Against Women and Children (2001-2015); national laws and international human rights instruments mentioned earlier on are used as measurement standards.

##### **3.1.1 Achievements by the Government: A Bid to Eradicate GBV**

It is worth noting that the Tanzanian government has made strides towards eradicating GBV incidents. In addition, the government has also made achievements in promoting gender equality. Some of these achievements made by the government are discussed herein below (some of which are already extensively covered in previous parts of this report):-

- a) Adoption of the Bill of Rights and Duties: The Constitution of the United Republic of Tanzania of 1977 was amended by Act No. 5 of 1984 to incorporate the Bill of Rights and Duties which, among other things, prohibits discrimination on the basis of sex.<sup>80</sup> This is a foundation on which other laws are supposed to comply with.
- b) Ratification and domestication of some of the gender-related international human rights instruments as the Figure 3 below shows:-

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<sup>80</sup> Article 13(5) of the Constitution of the United Republic of Tanzania of 1977.



Figure 3: Status of Ratification and Domestication of Gender Related Treaties - Tanzania<sup>81</sup>

S/No.	Name of The Treaty	Ratification/ Accession	Domestication
1	CEDAW of 1979. <sup>1</sup>	1985.	Provisions of the Constitution, lands and labour laws. <b>BUT</b> , not all forms of discrimination as holistically eliminated by current laws.
2	UN Declaration on the Elimination of Violence against Women of 1993. <sup>2</sup>	Not for ratification.	The Penal Code, Cap. 16 was amended in 1998 by SOSPA. <b>BUT</b> , not all GBV are addressed in the Penal Code, Cap. 16. Offences such as marital rape are not criminalized. The FGM is not a crime if committed to a woman above 18 years.
3	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003. <sup>3</sup>	2007.	Current laws address some of the provisions of this Protocols e.g FGM. <b>HOWEVER</b> , many issues e.g Health Rights are not addressed in Tanzanian laws.
4	Beijing Declaration and Platform for Action of 1995. <sup>4</sup>	Not for ratification.	Its call for, <i>inter alia</i> , equal representation in all spheres of life is somehow implemented. <b>BUT</b> , lots of other gender related issues especially socio-economic rights are not yet adequately fulfilled.
5	SADC Protocol on Gender and Development of 1997. <sup>5</sup>	No information.	Its 30% requirement for women representation in Parliament is met. <b>HOWEVER</b> , other gender related issues e.g to have specific law and Courts of law/ session on GBV or VAW are not yet fulfilled.
6	Addendum to the 1997 Declaration on Gender and Development By SADC Heads of States or Government of 1998. <sup>6</sup>	No information.	Calls for, <i>inter alia</i> , presence of special courts of law or sessions for gender violence cases by December 2012. As of February 2013, there were no special courts or session for cases on GBV related cases in Tanzania. <b>BUT</b> at least, the Tanzania Police Force (TPF) has tried its best to initiate the PGCDs at 417 Police Stations. The OSC guidelines of 2013 is ready and that, OSC's services have started in some places in Tanzania.
7	Convention on the Right of the Child of 1989. <sup>7</sup>	2009.	Domesticated. Enacted a law in 2009.
8	African Charter on the Rights and Welfare of the Child of 1990.	2003.	
9	Optional Protocol to the International Covenant on Civil and Political Rights of 1989.	Not yet ratified.	Not domesticated; therefore, no one in Tanzania can file individual claims to the treaty monitoring body on civil and political rights.

<sup>81</sup> A whole of this part has been copied from the LAS (2013) Status of Rectification of the Laws which Impede Gender-Related Rights in Tanzania (Refined Draft, 29th June 2013). Pages 28-33. Note that, this table is an analysis made by Adv. Clarence Kipobota while fine-tuning the LAS report. Therefore, all information in it are original work of Adv. Kipobota who has also fine-tuned this TAVILA's report.



10	Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989.	Not yet ratified.	Therefore, death penalty is still in force in Tanzania.
11	ILO's Equal Remuneration Convention of 1951.	2002.	Domesticated. The Employment and Labour Relations Act of 2004 plus its regulations domesticate almost everything about this Convention.
12	ILO's Convention on Abolition of Forced Labour of 1957.	1962.	The Law of the Child Act of 2009 and Employment and Labour Relations Act of 2004 plus their regulations domesticate almost everything about these three mentioned conventions.
13	ILO's Convention on Minimum Age of 1973.	1998.	
14	ILO's Convention on Worst Form of Child Labour of 1999.	2001.	
15	Convention on the Elimination of All Forms of Racial Discrimination of 1966.	Not yet ratified.	Not domesticated.
16	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.	Not yet ratified.	Not domesticated.
17	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990.	Not yet ratified.	Not domesticated.
18	Convention on the Rights of Persons with Disabilities of 2006.	2009.	Domesticated. Enacted the law in 2010 (cited in this TAWLA's report).

Source: Adv. Clarence KIPOBOTA, 'Gaining Momentum: State Promises to Protect Women's Human Rights in Tanzania: Are we Progressing?'<sup>82</sup>

- c) Amendment of the Penal Code, Cap. 16: As noted earlier on the enactment of SOSPA in 1998 was a major in strengthening the criminal justice system to address GBV especially in the area of sexual violence against women and children. The SOSPA criminalizes various forms of GBV, including rape, sexual assault and harassment, sex trafficking, and the FGM.
- d) Formulation of National Plan of Action for Prevention and Eradication of Violence Against Women and Children in 2000 (2001-2015): This long-term plan, which is discussed in previous parts of this report, takes a multi-sectoral approach, was visionary, striving to address legal, social, economic, cultural, political, education, training, and awareness problems.<sup>83</sup>
- e) Establishment of the TPFNet: The Tanzania Police Force established Tanzania Police Force Female Network (TPFNet) for the purposes of, inter alia, ensuring that gender issues, particularly GBV, are taken care of in the policing work. One of the initiatives done is the establishment of the PGCDs throughout the country. According to the study conducted by Kipobota by June 2012 TPFNet

<sup>82</sup> Paper Presented at Karimjee Hall, Dar es Salaam, Tanzania, on 8th March, 2013 During the WiLDAF Tanzania's Commemoration of the 2013 International Women's Day.

<sup>83</sup> The Plan has contributed as a guide for stakeholders, validated the coordination role of the women's machinery as well as validated the efforts of stakeholders working on GBV by acknowledging and showing that GBV was indeed a government priority.



had already established a total of 417 PGCDs. These desks are operational in all police stations at district levels of all 148 government's (and 162 police's) districts of Tanzania.<sup>84</sup> The desks are successfully integrated into structures of the police force with top level leadership commitment and involvement.<sup>85</sup> It has also formulated the Standard Operation Procedure (SOPs) and Guidelines for proper handling of GBV claims reported to its stations.<sup>86</sup>

According to the Gender Assessment of the Legal Sector Institutions (supra) these reforms in the police force have been introduced in order to make the police station environment less intimidating to female victims of sexual violence. It is the reforms which have resulted in the formation of the TPFNet and the creation of PGCDs. Police officers who have received specialized training on GBV are managing the said police desks. However, it is generally agreed that the rate of prosecution and of conviction is still very low compared to the magnitude of the GBV crimes as it is already argued above.

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- f) Formulation of the National Strategy for Growth and Poverty Reduction (MKUKUTA II): The MKUKUTA II acknowledges GBV as an issue needing intervention. It provides an intrinsic link between poverty, access to justice and persistence presence of GBV in Tanzania. Therefore, it proposes holistic and multidimensional approaches to address GBV at different institutional, policy and legal frameworks levels. The approaches include engagement of CSOs are the important partners. In that regard, the TAWLA's GEWE II project was rightly footed on the ground as part of the implementation of MKUKUTA II.
- g) Development of the GBV Management Guidelines: A need for having GBV management guidelines emanated for the first time in 2010 during the TDHS, which revealed high prevalence of GBV incidents. Therefore, the government considered it imperative to devise procedural mechanisms to handle it. Earlier before 2010, the TPFNet had already started to formulate almost similar guidelines – focusing on the management of the PGCDs. Eventually, the Guidelines for the Establishment of Police Gender and Children Desk was effected in 2012. Other GBV management guidelines include:-

84 Adv. Clarence Kipobota's interview with SACP Zuhura Munisi (Mrs), the then Chairperson of the TPFNet, on 27th June 2012 at her Office, Police Headquarters, Dar es Salaam. This information is quoted from the TPFNet's PGCDs Mapping Report of 2012 done by Kipobota, C.

85 LSRP (2012) Gender Assessment of Legal Sector Institutions in Tanzania (Draft Report of June, 2012), Ministry of Constitutional and Legal Affairs, Page 39.

86 See Kipobota, C (2012) A Comprehensive Study on the Efficiency of the Enforcement of the Penal Code, Cap. 16 against the Gender Based Violence in Tanzania Mainland. Page 47. The study was commissioned by WiLDAF Tanzania.



- National Management Guidelines for the Health Sector Prevention and Response to Gender Based Violence of 2011 – Tanzania Mainland/ MoHSW.
- National Policy Guidelines for the Health Sector Prevention and Response to Gender Based Violence of 2011 – Tanzania Mainland/ MoHSW.
- Standard Operating Procedures for Prevention and Response to Gender-Based Violence and Children Abuse of 2012 (SOPs) - TPFNet.
- National Guidelines for Integrating and Management of the One Stop Centre Services into Health Care Facilities of 2013.

The guidelines cover a range of critical areas in GBV management including contextualizing health services into the broader spectrum of policy and legal environment affecting GBV globally and nationally, linkages between health facility and the community regarding GBV services, standards for medical management of GBV survivors, referencing the guiding principles of human rights, ethics and compassion, medical management of GBV for adult individuals as well as for children and abused adolescent, establishing linkages for GBV prevention and services and finally for monitoring , evaluation and quality assurance (Ref.: McCleary-Sills, J et al (2012) Help-Seeking Pathways and Barriers for Survivors of Gender-based Violence in Tanzania: Results from a Study in Dar es Salaam, Mbeya, and Iringa Regions. EngenderHealth/CHAMPION, March 2013).

- h) Formulation of the GBV Performance Indicators: The above named National Guidelines for the Health Sector Prevention and Response to Gender-Based Violence of 2011 has, among other things, included GBV performance indicators for the health sector. The indicators are clearly marked for monitoring purposes from national to regional, district and facility level. This monitoring framework is in line with the human rights approach to programming whereby both the demand and supply sides are motivated and challenged to deliver their parts in the chain of results.

### 3.1.2 Efforts and Achievements by CSOs: Good Practices in Tanzania

It seems that a call made by the above named instruments to have a comprehensive and holistic approach to GBV management has been responded to quite positively. The SADC Protocol; MKUKUTA II; National Plan of Action (2001-2015); and others require multidimensional approaches towards GBV eradication. The CSOs took liberty of this opportunity to team among themselves and with the government agencies. For instance, this analysis found out that, the following are some of the initiatives done by CSOs:-

- a) Working with communities to change attitudes and create stronger voices against GBV in Lake Zone: When it comes to prevention and eradication of GBV, the community has an important role to play. People in their respective communities can play a key role by promoting the safety of persons within their communities. An initiative was undertaken by the UN agencies on a case study basis which in Tanzania was implemented by UNFPA in partnership with AMREF Tanzania in



what is now Geita Region, under the Stronger Voices (for Reproductive Health) Project which among other things aimed at mobilizing communities to reduce GBV. The villagers were facilitated to learn about human rights aspects of reproductive health, GBV and human rights based approach to programming for the purposes of integrating them in the work of the Ward Development Committees (WDCs).

Regular review meetings were held and the findings from such an initiative were shared and discussed at public meetings attended by community members, including the members of the WDCs and District officials. The result of deliberations and decisions were shared and discussed at meetings of the District Council to mobilize public demand, empower duty bearers and enhance visibility of poor health services and the issue of GBV. At the end of the pilot project, domestic violence incidents and other forms of GBV had observably been reduced. Further it was reported that partner intimacy had visibly improved in the participating communities.<sup>87</sup>

- b) Holistic Approach on Treatment, Counseling Training, Start Up Businesses for Survivors: The Kiota for Women's Health and Development (KIWOHEDE) registered in Tanzania as a non – profit health and advocacy organization for women and children in 1998. The organization deals with rescuing and rehabilitating children who are victims and survivals of trafficking in Tanzania. KIWOHEDE provides remedial medical services in collaboration with health care facilities. The organization focuses on the health aspect because majority of children rescued happen to experience some health challenges including malnutrition, starvation and malaria.<sup>88</sup>

In 2006, KIWOHEDE worked with 900 girl victims of sexual abuse and violence, and referred 123 boy child victims to other agencies in Mbeya, Iringa and Songea regions. Moreover, in the same year, the Dar es Salaam based KIWOHEDE Manzese Crisis Management Centre managed to rescue, shelter and rehabilitate 52 child domestic workers. A total of 1300 girls and boys who were rescued from commercial sexual exploitation had received vocational training courses including tailoring, embroidery, carpentry and motor vehicle or bicycle mechanics. The courses were offered in collaboration with other partners to ensure availability of employment opportunities for graduating trainees.

The KIWOHEDE's Bunju Centre in Dar es Salaam which caters for victims of trafficking is both a rescue home and vocational training centre. It is used as a residential shelter for the victims of trafficking. Such victims are identified through the police, local government leaders and charitable organizations that refer them to the centre.

Realizing that the majority of the child victims are lured away from their families, with parental consent on false promises made by perpetrators, KIWOHEDE has extended its coverage to reach out for the victims' families for the purposes of

87 Rwebangira, M.K and R. Mramba (2007) An Updated Reference Document on the Policy and Legal Framework Affecting Children Rights in Tanzania. Research on Poverty Alleviation (REPOA): Dar es Salaam. Page 31.

88 <http://www.kiota.org/projects/2005-2006-rescue-home-appeal> posted on October 14th, 2007 and interview with Justa Mwaituka, Founder and Executive Director, KIWOHEDE on 3/03/2010 and September, 2013.



reunion. For instance, in 2006 KIWOHEDE facilitated the reunification of 57 child victims of trafficking with their families. Some have now found jobs in Dar es Salaam while others have started their own petty businesses under generous seed grants and technical support secured from KIWOHEDE.

The organization has established over 22 centres in 10 districts throughout Tanzania. Since its initiation, KIWOHEDE has helped about 36,000 young people many of which have been involved in prostitution, domestic servitude and trafficking.

- c) Kivulini Centre As the Social Counseling and Legal Clinic: The Kivulini Centre was registered in Tanzania as a NGO in 1999. Its core objective being prevention of domestic violence in Mwanza region and beyond. Its name 'Kivulini' literally means "in the shades of shelter" to imply a safe place. It creates opportunities for community members to talk, organize and work to prevent domestic violence. The project has many components including capacity building of the community actors, training of the media, social counseling, advocacy, community awareness, economic empowerment, documentation and legal support services.

With regard to counseling, the organization established a Social Counseling and Legal Clinic. A training counselor is available on full time basis to counsel women experiencing domestic violence. Both women and men are free to access the Clinic for free. The indigent clients are assisted with Court fees and other humanitarian needs including meals. By 30<sup>th</sup> July 2002, the said Clinic had provided services to 433 clients who included the new and regular ones. Most of them experienced domestic and sexual violence.

The referrals are made to health care facilities , the police or social welfare offices. Often the counselors accompany clients to these referral centres to provide support and 'negotiate' the system as well as tracking down extent of support that the victim would receive.

- d) Temporary Shelter for Battered Women: The House of Peace is an (NGO) initiative established in 2002 to provide temporary shelter for women and children who are victims of GBV. It is the only crisis centre for women in Dar es Salaam. It provides shelter, legal and health care, food and clothing to women and children survivors of GBV.

The clients are referred to the centre by organizations dealing with human rights and advocacy groups such as the TAWLA; TAMWA; the police as well as hospitals and other health care facilities in the city. The house offers women a temporary shelter for a maximum of three months after which they must find alternative means of living. The location of the shelter remains anonymous to preserve safety of the clients from the perpetrators.

- e) Another Temporary Shelter for Survivors with training for Capacity Building: The Tanzania Rural Women Development Foundation (TARWOC) is also a local





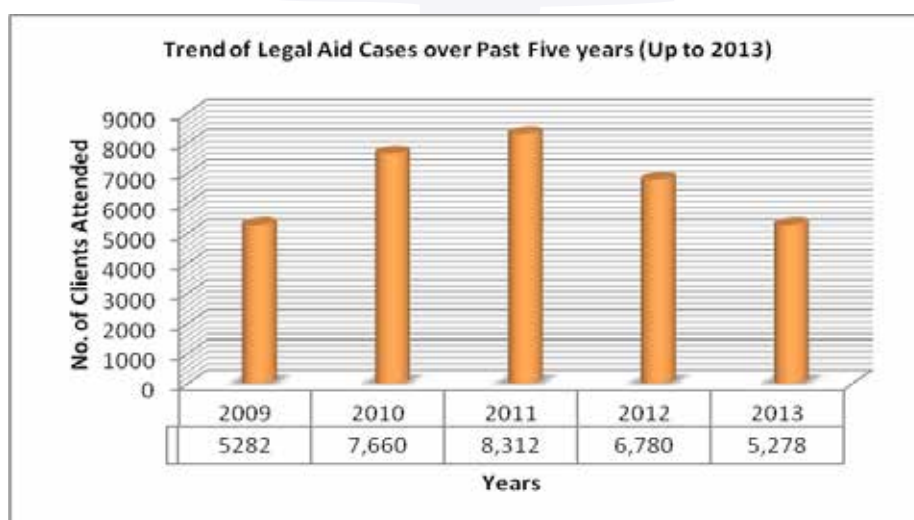
NGO which is based in Iringa region. . It was established in 2011. Among other things, the organization offers temporary shelter to women and children who are victims or survivors of GBV. Apart from the shelter, it also provides counseling services to family members and perpetrators emphasizing the benefits of family harmony in the community. According to its Chairperson, the service has succeeded to reduce if not eliminate the problem of homeless or street children who were running away from home due to domestic violence.

The target group of the Centre is women victims of rape, widows who have been affected by GBV such as denial of ownership to matrimonial properties left behind by their deceased husbands, domestic violence, orphans and other most vulnerable children (MVC). Its vision is to offer immediate help and build their capacity for self betterment.

- f) Awareness Creation, Sensitization and Training of the Public: Training and sensitization of the public have been and continue to be conducted by the government and NGOs in order to reduce violence, promote community support in reducing exploitation of women and children and in handling cases at the grassroots level. There has also been a notable increase in the number of women in the legal profession, thus improving women’s access to legal services. Moreover, due to increased awareness of women’s and other human rights, almost all legal aid providers and paralegals have been recording an increase of indigent people who seek legal redress to their problems.

For instance, according to the latest WLAC’s Annual Progress Report of 2013 (notes of the report), a number women and children seeking legal aid services in their centres has been on steady increase over past five years as Figure 4 below shows.

Figure 4: Five Year Trends of WLAC’s Legal Aid Clients 2009-2013



Source: WLAC’s Annual Reports of 2009, 2010, 2011, 2012 and 2013.

The fluctuation in number of the cases attended as the figure above shows, is attributed to; i) decreasing of old clients whose cases are completed in courts



of law; ii) increased in number of the legal aid providers (LAPs) over past three years, most of which were the WLAC's implementing partners (paralegals); and iii) increased awareness of gender-related rights which facilitate women and other vulnerable groups to resolve their cases on their own.<sup>89</sup>

Other measures to raise awareness and sensitizing community on human rights include the translation of legal documents, in particular laws, in Kiswahili language in the form of booklets, pamphlets, posters, brochures and leaflets which were disseminated.

- g) Adoption of socio-economic measures to address GBV: As it has been stated above, there is a link between GBV prevalence and poverty (being a socio-economic issue). This link is well articulated in the UN MDG, MKUKUTA II and several national policies and Plans mentioned above. Some of the studies on GBV cited above found out that, there is a limit of the laws in bringing about desired changes in the status of women including freedom from GBV. This is why where economic initiatives such as village community banks (VICOBA) and SACCOS are vibrant, incidents of GBV are minimal or decreasing. Other social measures include availability and access to health care services; education; and water.

### 3.2 Comparative Analysis of Some Legal Efforts between Tanzania and Other SADC Countries

There are similarities and differences between SADC countries on how they address GBV issues in their legal frameworks. This analysis found that, Tanzania is doing fine in many ways as explained above. However, it is lagging behind to address most of the serious GBV issues into its legal framework. The following is a brief comparative analysis of how other SADC countries are fairing in some of the GBV issues: -

- a) Domestic Violence: Tanzania does not have legislation on domestic violence. While Tanzania is still 'soul searching' on this GBV component, South Africa enacted the Domestic Violence Act in 1998 as well as Namibia with the Combating of Domestic Violence Act of 2003. Malawi recently enacted the Protection Against Domestic Violence (Prevention of Domestic Violence) Act, 2006.

These fairly recent pieces of legislation must have been borne out of a realization that combating domestic violence was indeed the key to effectively address gender based violence, creating an enabling environment for preventing the spread of HIV/AIDS, thus acknowledging what feminists have long argued that the private is indeed public. All this is in line with CEDAW Committee recommendation No. 19 that states have a responsibility to protect women from violence whether occurring in private or public spheres.

- b) Marital Rape: Another area of a specific category of domestic violence where

<sup>89</sup> WLAC, Annual Progress Report of 2013 (Pre-Final Draft). WLAC: Dar es Salaam. Pages 2 and 2.



Tanzania has been left behind is legislation on marital rape. In this shortfall, it stands with Malawi and Zambia. However, as it is argued above, the Law of Marriage Act, Cap. 29 prohibits rape where couples are judicially separated and therefore relieved of the duty to cohabit. It can be recalled that prohibition of rape in marriage was included in the draft Bill of the SOSPA legislation in 1997 but was rejected by Parliament and therefore removed from the final enactment that came to be known as the SOSPA.

Lesotho has included prohibition of marital rape in its Sexual Offenses Act of 2003. Namibia did the same in its Domestic Violence Act of the same year (2003) and South Africa had to amend its Family Violence Act of 1993 through the Criminal Law and Sexual Offenses and Related Matters Amendment Act in 2006. Tanzania still has the opportunity to do the same as advised by the CEDAW committee.

- c) Shelters for GBV Survivors: Lack of shelters or sanctuary and other forms of assistance and safety nets for survivor of GBV has been cited as a risk factor for GBV survivors especially in the refugee camps<sup>90</sup> and everywhere in Tanzania. For instance, some of the informants interviewed in this study pointed it out as a serious anomaly that compromises any meaningful rescue efforts. One such interviewee stated as follows:-

'A protocol on steps to take in the case of SGBV would be an important input to guide implementers at health facilities and police. But so what? Without shelters for survivors, the latter would willingly skip the steps because the victims would still have to go their abusers and make the best of a bad situation. A government Orphanage at Kurasini takes in battered women as a make shift shelter. There is a great need for it'.<sup>91</sup>

Another pointed out that not only did the absence of shelters deny the victims/survivors of the crucial intermediary help they need urgently but also puts at risk the good neighbours and relatives who volunteer to accommodate them temporarily. A leader of the women's self help group stated as follows:

Domestic violence is a big problem for our group. We are wives of men in uniform. Their motto is that we do not complain or are not complained about. So we saw our fellow women suffering. They would be beaten in the night and run to the neighbour's house. Sometimes they would be chased back or get shelter for the night and asked to leave the next day. One day my neighbour came to my house. My husband agreed to host her but the next day her husband made a big issue out of it. He accused us of interfering in his internal affairs. My husband told me to stop being forward and fermenting trouble for our family because I could be made to pay for it and there is no protection for such "intrusion". The next day I started mobilising other wives and women in uniform to form a self help group, we are not registered but we are learning informally from other women's groups like FemAct.<sup>92</sup>

<sup>90</sup> Ward, Jeanne (2002) *If Not Now, When? Addressing Gender-Based Violence in Refugee, Internally Displaced, and Post-Conflict Settings*. RHRC. Mabuwa, Rumbi. *Seeking Protection: Addressing Sexual And Domestic Violence In Tanzania's Refugee Camps*. New York: Human Rights Watch.

<sup>91</sup> Interview between the report writer and the Principal State Attorney, Ministry of Justice and Constitutional Affairs, March 9, 2010.

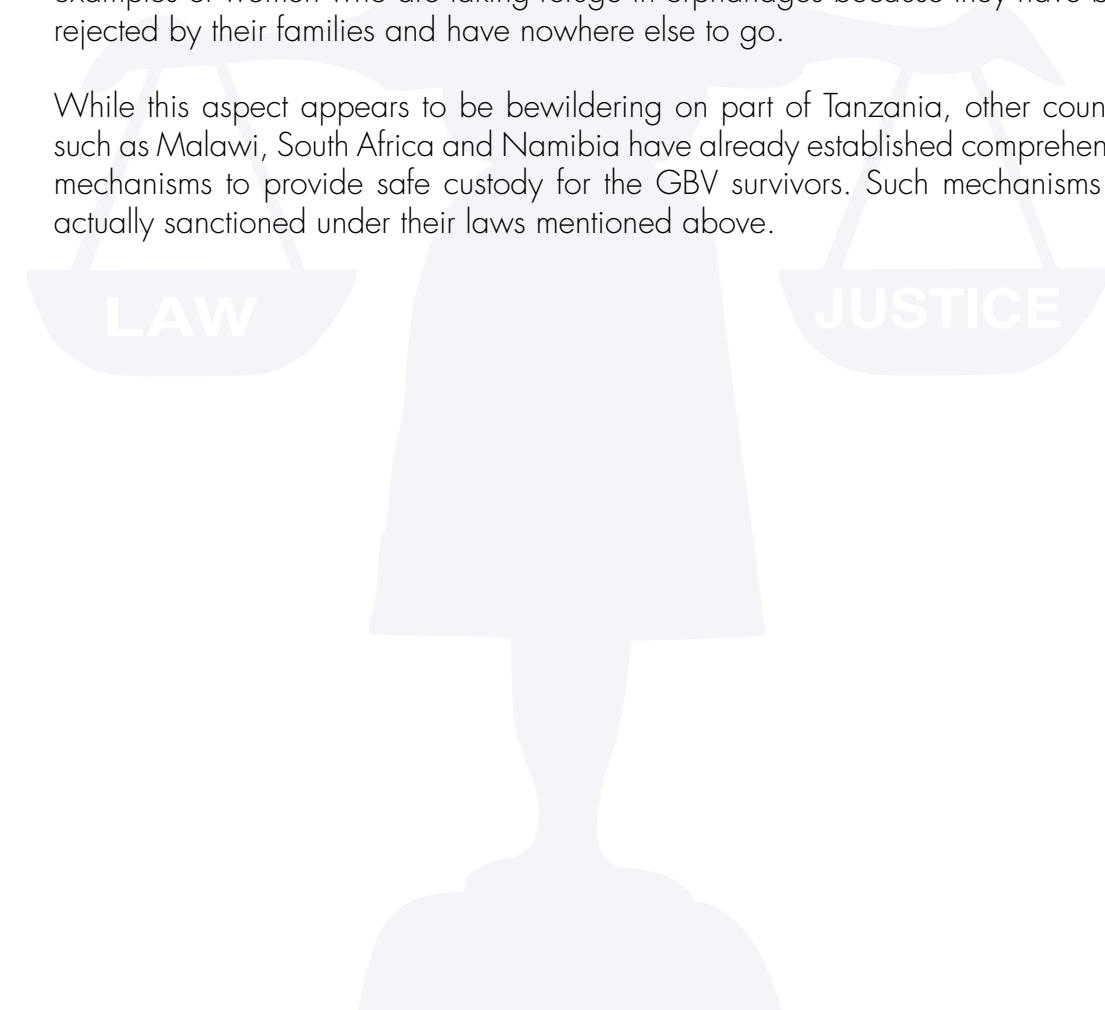
<sup>92</sup> Interview between the report writer and the Chairperson of Umoja wa Wanawake Wanajeshi na Wake wa Wanajeshi on 13th March, 2010.



Moreover, absence of shelters for survivors in Tanzania was cited by a foreign Court as synonymous with simply condoning domestic violence which women have to tolerate or face consequences of intolerance.<sup>93</sup> There are very few initiatives mostly in Dar es Salaam that offer direct support to GBV survivors. These include KIWOHEDE; House of Peace; and Kivulini as discussed above.

A senior government official<sup>94</sup> commenting on the proposal to amend Penal Code, Cap. 16 so as to include Post Exposure Prophylaxis (PEP) for rape survivors wondered what use it would be without shelters for survivors even briefly for the most critical period. She said as long as women have to go back home and face their abusers, such interventions are not likely to have any significant impact. Such abusers might also be the benefactors of survivors/victims of GBV. Other commentators cited examples of women who are taking refuge in orphanages because they have been rejected by their families and have nowhere else to go.

While this aspect appears to be bewildering on part of Tanzania, other countries such as Malawi, South Africa and Namibia have already established comprehensive mechanisms to provide safe custody for the GBV survivors. Such mechanisms are actually sanctioned under their laws mentioned above.



<sup>93</sup> Shaefally Rajani nee Shaefally Barot Vs. Shimir Rajani Resident Magistrates' Court Kisumu Matrimonial Cause No. 24 of 2007; and Shimir Rajani and Shaefaly Rajani a.k.a Barot Canadian Supreme Court of Justice at 393 University Avenue, Toronto Ontario 591 E6 Court File No. 07-FA-14865.

<sup>94</sup> Interview between the report writer and the Principal State Attorney, Ministry of Justice and Constitutional Affairs, Dar es Salaam.



## CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

### 4.0 Introduction

This is the last chapter of this report. It contains two parts, namely; the conclusion and recommendations. The conclusion summarizes what have been discussed above; while the recommendations part of this chapter presents the suggestions proposed basing on the gaps identified in terms of loopholes and enforcement of the laws and policies on GBV.

### 4.1 Conclusion

This study set out to review the legal and policy frameworks on GBV in Tanzania. In doing so, the CEDAW and other international human rights commitments which Tanzania has ratified have been used liberally to measure the extent of gaps in effective address of GBV in the country. However, some of these commitments are monitored by committees of experts which regularly carry out a 'gender audit' of the government implementation of its commitment such as progressive eradication of GBV. Thus the study used the government and CEDAW Committee in the reporting process to highlight gaps and weigh the national response to the priorities identified by CEDAW (and other instruments). This does not mean that GBV is an exclusive concern of women but is in recognition of the fact that GBV mostly affects women.

The CEDAW's position is unequivocal, GBV in any form, whether arising from the private or public sphere is a violation of human rights. Consequently, efforts to combat it have been made at every level. The international and regional human rights treaties are part of this effort. They are codified standards for guiding state parties and assessing the adequacy of state actions in promoting, fulfilling and protecting the human rights of its people through legislative, judicial, administrative and other measures.

The study found out that GBV is a reality. It occurs in various forms including domestic violence; marital/ intimate partner rape; rape by a stranger; FGM; trafficking and sexual exploitation; VAC; violence against elderly women and violence against males. Among these domestic violence was the most prevalent type of GBV and women were the found to be the major victims of the vice.

It was also the progress has been made on the national front to prevent and punish perpetrators of GBV. On the policy level, violence against women is listed among the indicators of poverty in the MKUKUTA II. The MCDGC in collaboration with stakeholders is implementing a number of strategies on prevention of GBV including the National Action Plan on Violence against Women; on Female Genital Mutilation and the Stop Violence campaign.

At institutional level, recent initiatives in the police force have positively responded to the long term cry of the civil society to initiate the PGCDs at police stations to



handle cases of GBV appropriately. Moreover, the OSC services have just begun in November 2013 following the formulation of its management guidelines. A plan ahead is to have them operational at all district level health care facilities in Tanzania.

As for legal framework, the study found out that, there is no comprehensive law on GBV as a whole or domestic violence. However, some of the elements of GBV are criminalized under the Penal Code, Cap. 16 as 'sexual offences.' The GBV is also addressed (in pieces) by a number of other legislations including those relating to the rights of children, HIV/AIDS, and persons with disabilities.

The legal framework is weak in number of ways apart from lacking a specific and comprehensive law on GBV. Other weaknesses include presence of discriminative provisions in the current laws; and laws which provide inadequate (protection) for instance about FGM and age of marriage for the girl child. This framework is weakened further by lack of capacity to enforce the laws and low awareness on the same. Due to these and other factors, efforts by civil rights groups earn a diminutive result. Some of the necessary services such as sheltering of the GBV survivors are missing in all places save for Dar es Salaam and few regions.

### 4.3 Recommendations

The specific recommendations on various issues raised are explicitly and impliedly included in the main text of this report. Therefore, the following are rather general ones. They are directed to the respective government Ministry and agencies as well as other stakeholders. Most of them are short term proposed solutions which needs immediate attention.

#### 4.3.1 Ministry of Community Development, Gender and Children

Recommendations directed to this Ministry are:-

- a) Champion and coordinate stakeholders including NGOs, bilateral and multilateral partners to carry out a legal and policy advocacy.
- b) Facilitate enactment of a specific and comprehensive law on domestic violence.<sup>95</sup>
- c) Provide legal protection for shelter providers.
- d) Establish a public legal defense agency where the government employs full time lawyers to advise and watch the interests of GBV survivors and other classes of legal problems.
- e) Incorporate GBV into HIV policies and plans of action.
- f) Facilitate a policy dialogue on the social, health and economic consequences of GBV on sustainable development and society as a whole.
- g) Assist gender focal points in ministries on how to address GBV issues and develop sector specific action plans on GBV.
- h) Push for the effective implementation of the Beijing Plan of Action (BPA) and other instruments on GBV.

<sup>95</sup> This is necessary for many reasons. Firstly, a law would make a political statement that domestic violence is wrong. Such a law could also provide for means of punishment besides imprisonment of the perpetrator, which for many women is a threat to their livelihoods because they are economically dependent on their husbands.



- i) Revise outdated policies to include GBV lens.

### 4.3.2 Multi-Sectoral Coordination Mechanism on GBV and orient Partners

On this one, it is hereby recommended that:-

- i) Set up inter-organizational multi-sectoral GBV working groups from the ward to district and national level. The effort can be coordinated by a mutually selected agency such as an NGO or a national institution with regular meetings to review progress. Reports from these meetings can be published and discussed as one of the major activities of the Stop Violence Campaign week and planning ahead.
- ii) All relevant sector groups should be represented in the Coordination Agency and define their respective responsibilities in prevention and collaboration with the working groups and coordination agency.

### 4.3.3 Medical - Legal Linkages at the Survivor's Disposal

Physical violence such as battery, homicide as well as sexual violence including rape involve at the very least both medical and legal sectors. It is therefore:

- a) Pertinent to develop protocols to systematize effective linkages between the health service provider who receive a victim or survivor of GBV with the police and court processes.<sup>96</sup>
- a) Establish and /or strengthen access to free legal services including confidential counseling on available legal options with full support for follow up of prosecution and redress with due regard to safety and security.

### 4.3.4 Make the Health Sector More Responsive to GBV Survivors

A GBV survivor has the dilemma of choosing between pursuing a PF. 3 from a police station in order to qualify for treatment and obtain evidence of injury. This may be a hard choice of either receiving prompt treatment or dealing with her injuries privately at the earliest possible opportunity and forgo any legal remedies she may have.<sup>97</sup>

Consequently, many GBV victims and/ or survivors are forced to choose between pursuing health remedies at privately owned facilities. Thus they often end up disposing off the evidence of abuse and therefore eliminating the possibility of pursuing a legal remedy in future.

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<sup>96</sup> Note that, the similar initiative done to establish OSC services would still not be sufficient or take a long period of time to be realized due to resource factors. Therefore, while we wait for the OSC to spread all of the country, such proposed protocols would fill the vacuum.

<sup>97</sup> This dilemma is impounded by the fact that only designated government health facilities have the mandate to offer services to GBV patients. It was a common complaint among stakeholders interviewed in this study that government owned health facilities were very few unlike privately owned facilities which were more widely distributed. But the latter are not allowed handling PF.3. Further, government owned health facilities are often poorly stocked with medicines required.



Due to that situation, it is hereby recommended to take the following actions:-

- a) The Police General Orders (PGO) should be amended to allow privately owned health facilities to record medical evidence of physical violence if requested by a patient, even if the victim or survivor does not have a PF.3.<sup>98</sup>
- b) Work with the PGCD to streamline better working ways and means of handling of PF.3 by synchronizing with PGOs with health providers' regulations in GBV cases.
- c) Hasten implementation of the OSC services throughout the country and should be spread beyond regional and district levels of health care facilities.
- d) Incorporate GBV screening and referrals into HIV counselling and testing programmes.

#### 4.3.5 Linkages with Judicial Processes

The experience gained in the implementation of Penal Code, Cap. 16 (as amended by SOSPA in 1998) has led to the conclusion that the provisions for stiff sentences may have rendered the law less effective by the Court's reluctance to send perpetrators in jail for such long terms unless there was overwhelming evidence thus despite the leniency of the law convictions are much fewer than the reported let alone the incidence of GBV.<sup>99</sup>

Due to that situation, it is hereby recommended that: -

- a) Sensitization of Judges and Magistrates to handle GBV related cases sensitively and effectively.
- b) Positively review the SOSPA penal regime with the full participation of stakeholders to assess whether it is time to seek its amendment or to advocate for public awareness and improved implementation.

#### 4.3.6 Work with Communities to Identify and Address Underlying Causes

The community has an important role to play. People in their respective communities can play a key role to promote the safety of persons, in particular women and children within their communities. It is recommended to involve communities in the fight against GBV in the following manner:

- a) Capacity building of key actors through participatory planning and implementation of interventions and holding feedback meetings with the Village and WDC.
- b) Orientation of district level actors on GBV through Training of Trainers (TOT).
- c) Advocacy and policy dialogue with the community through community development officer at all levels.
- d) Strengthening and coordinating partnerships among different actors.

<sup>98</sup> The amendment can make provision for the patient to file this evidence with the police at a later stage at her discretion, provided the health worker recording such evidence and providing treatment to the victim shall take responsibility for the integrity of the report. Alternatively, given the paucity of government owned health care facilities, accredited private health care centres should be designated as qualified to deal with PF.3.

<sup>99</sup> Further, as it is stated above, the impact of financial pressure on the survivor's associates relatives, Court delays, police and judicial corruption as well as preference for immediate out of court settlements as opposed to court sanctioned compensation which has to wait not only for the conclusion of the case but also the release of the convict from prison to be paid.





- e) Continuing monitoring and evaluation of the interventions made at community levels.
- f) Ensure meaningful participation of all stakeholders including the ordinary citizens.<sup>100</sup>
- g) Form peer support counseling groups through TOT of community members as facilitators.
- h) Work with local government leaders to translate the GBV plans of action into concrete components of community by-laws.

### 4.3.7 Empower the Police Force to handle GBV Survivors

Nothing suggested above could be effectively implemented if the main law enforcers (police) are not provided with adequate capacity in terms of knowledge, skills and resources to handle or manage and coordinate well their statutory and administrative duties to handle GBV cases.

As such, it is recommended that:

- a) Develop a comprehensive data base on GBV reported cases, type, relationship to perpetrator, rate of similar incidents, other mechanisms employed to resolve the problem and preferred by the survivor as well as well as action taken.<sup>101</sup>
- b) Support the PGCD initiative and train the TPFNet to strengthen investigation of GBV crimes, understanding, identification and investigation of trafficking cases in Tanzania and assist relatives to deal with cases of trafficked kin outside Tanzania.
- c) Train and equip the police on how to deal with non-physical GBV.
- d) Support the Tanzania Police Force to expand PGCDs throughout the country down to the ward level.

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<sup>100</sup> Special attention to marginalized, disadvantaged and excluded groups to participate in all processes should be paid a due consideration.  
<sup>101</sup> Such a data base is crucial to understanding GBV its root causes, impact on society, women and children in particular as well as mitigating factors.



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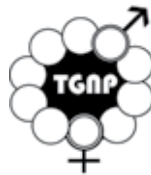




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