

VIOLENCE AGAINST WOMEN IN TANZANIA: A CALL FOR AN ANTI-DOMESTIC VIOLENCE LEGISLATION



Hamisa Omari Mwenegoha *

ABSTRACT

Violence Against Women is a concern of International Community at the moment. Tanzania being part of that community has tried to overcome this problem through amendment of several laws. However, those scattered laws still have various gaps. This paper argues that it is necessary for state in Tanzania to enact specific law regulating Violence Against Women.

KEYWORDS: Gender Inequality, Domestic Violence and Legislation

1.0 INTRODUCTION

Violence Against Women (VAW) is a reality all over the world. It is, to a large extent, attributed to gender inequality and vulnerability of the women, in which much of the violence is rooted. The occurrence and presence of VAW is influenced by various factors of which are society-based. This reality makes it quite complex as the cultural norms causing it to differ from one society of community to another. This is why there is no clear and common, acceptable language of VAW.²

It should be noted that, violence against women is both a violation of human rights and a form of discrimination. It has direct 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 victim have wider social and economic implications on society as a whole.³ VAW occurs on a vast scale and takes different forms throughout women's lives, ranging from physical or sexual abuse, early marriage, female genital mutilation, and wife beating to abuse of elderly.⁴

A recent study, Tanzania Demographic Health Survey (TDHS) Report of 2015-16 makes it more explicit that, about 40% of women aged 15-49 have ever experienced physical and 17% have ever experienced sexual violence. Although experience of violence is higher among married women, particularly formerly married women, 16% of never married women have also ever experienced physical violence and 9% have ever experience sexual violence.⁵ In order to overcome such challenges, Tanzania adopted initiatives including undergoing criminal

and civil justice reforms mainly under the Legal Sector Reforms (LSRP). This has resulted into amendments and enactment of substantive and procedural laws, some of them addressing the issue of violence against women and children.⁶

Despite those and other notable legal reforms, the social and legal protection afforded to women seems to remain fragile. This situation is partly attributed by presence of bad laws.⁷

This article therefore aims at looking on the issue of violence against women in Tanzania on how cases of violence against women are handled, what pieces of legislation are in place in addressing the matter and the paper also addresses the available gaps in those pieces of legislation.

2. MEANING OF VIOLENCE AGAINST WOMEN

The term Violence against Women has been defined through national and international instruments. The National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18-2021/22 defined the term Violence against Women⁸ as;

all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.

Further, the preamble language of the UN Declaration on the Elimination of Violence against Women of 1993⁹ 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). 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, the Declaration declares that VAW is one of the crucial social mechanisms by which women are forced into subordinate position compared to men.

Due to the similarities between GBV and VAW in term of causing factors and results of the two as far as gender rights are concerned, this paper used the two terms interchangeably. Therefore, whenever GBV is mentioned, VAW is inclusive. The VAW is specifically defined by the Declaration that:

The 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 life¹⁰

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, have tried to define GBV/VAW.

The WHO defines GBV to include; domestic violence, sexual harassment, rape, sexual violence during conflict and harmful customary or traditional practices such as Female Genital Mutilation (FGM), forced

*LLM (Zimbabwe University), LLB (UDSM), Assistant Lecturer, Institute of Judicial Administration Lushoto

2 Tanzania Women Lawyers Association(TAWLA), *The Study on Reviews of Laws and Policies related to Gender based violence of Tanzania Mainland*, TAWLA, September 2014, p. 1

3 *Ibid* p. 8

4 *Ibid* p.2

5 <https://dhsprogram.com/pubs/pdf/FR321/FR321.pdf> accessed on July 2017

6 Tanzania Women Lawyers Association(TAWLA), *The Study on Reviews of Laws and Policies related to Gender based violence of Tanzania Mainland*, TAWLA, September 2014, p. 8

7 For instance, the Law of Marriage Act, Cap 29 (LMA), still sanctions marriage to a child below 18 years contrary to a number of international human rights instruments on the rights of women. The LMA is also silent on wife beating both of which are highly prevalent cultural practices. The Penal Code, Cap 16 is relatively blunt on Violence Against Women in many ways such as, it does not criminalize marital rape; it does not contain a specific provision on Gender Based Violence and some of the Gender Based Violence offences

8 National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18-2021/22 (Dec. 2016, p. vi); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

9 Adopted by the UNGAS Resolution 48/104 of 1993

10 Article 1 of the UN Declaration on the Elimination of Violence against Women of 1993

marriages and honour crimes. Others are trafficking in women, forced prostitution and violations of human rights in armed conflict.¹¹ Moreover, according to WHO, incidents of GBV include also forced sterilization, forced abortion, coercive use of contraceptives, female infanticide and prenatal sex selection.¹²

On the other hand, the CEDAW Committee's Recommendation Number Eighteen defines GBV as:-

Violence 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.¹³

On its side, the MoHSW of Tanzania in its Guidelines for the Health Sector¹⁴ 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. It includes but is not limited to sexual violence, physical violence and harmful traditional practices, and economic and social violence. It targets individuals or groups on the basis of their being females.

It should be noted that, there are some similarities in the definitions adopted by the UN institutions as well as the MoHSW. 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.¹⁵

11 Particularly murder, systematic rape, sexual slavery and forced pregnancy

12 Violence Against Women, http://www.who.int/topics/gender_based_violence/en/

13 A/RES/48/104 of 23 February 1994. See also: CEDAW/C/1992/L.1/Add.15

14 See United Republic of Tanzania, National Guidelines for the Health Sector Prevention and Response to Gender Based Violence of 2011

15 *Loc. cit.* TAWLA, p. 2

3. EFFORTS TO ADDRESS VIOLENCE AGAINST WOMEN IN TANZANIA

Tanzania adopted and acceded several international¹⁶ and Regional¹⁷ conventions and recognized declarations¹⁸ which address the issue of violence against women.¹⁹

Through the adopted convention²⁰ and declarations; Tanzania was able to undergo criminal and civil justice reforms under the Legal Sector Reform Programme (LSRP). This resulted into amendment and enactment of several laws some of which address the issue of violence against women. Below are some relevant laws and decided cases which try to address some of the VAW incidents in Tanzania.

16 The Government of the United Republic of Tanzania has ratified CEDAW of 1979 on 1985, the Optional Protocol of CEDAW in February 2004, which provides for enabling environment for women to seek justice in the CEDAW Committee

17 The Government is signatory to the African Charter on Human and People's Rights and its Optional Protocol on the Rights of Women in Africa. The Protocol was adopted on 11th July 2003, at the Second summit of the African Union in Maputo Mozambique, The Protocol among others requires African Governments to eliminate all forms of discrimination and violence against women in Africa and promote equality between women and men

18 Article 9(f) of the Constitution of the United Republic of Tanzania, mentions Universal Declaration of Human Rights (UDHR) 1948, General Assembly of the United Nations, Resolutions 217A, passed in Paris, France, 10th December 1948. Tanzania is a signatory of the UDHR which stresses that each person is equal before the law and has equal rights in the distribution of resources and social services. The equality and rights of each person has been enshrined in the Constitution of the United Republic of Tanzania of 1977 as amended in 1984 and 2000. The Constitution emphasizes the equality of each person, respect for each person's humanity and right to justice before the law. Tanzania is also a signatory to the SADC Declaration on Gender Development (1977) and then Addendum on the Prevention and Eradication of Violence Against Women and Children. Tanzania further ratified Beijing Declaration and Platforms for Action (1995)

19 See National Human Rights Action Plan 2013-2017, by Ministry of Constitutional Affairs and Legal Affairs, December 2013, page 55

20 In addition, Tanzania's ratification of the CEDAW and the Protocol to the ACHPR on the Rights of Women in Africa underscore the Government's commitment to ensure that rights of women are fully protected. See National Human Rights Action Plan 2013-2017, by Ministry of Constitutional and Legal Affairs, December 2013, page 55

3.1 The Constitution of the United Republic of Tanzania of 1977 in addressing VAW

Article 13 of the Constitution of the United Republic of Tanzania of 1977 (The Constitution) prohibits discrimination on the basis of gender, among other things. It requires that all persons should be treated equally without any form of discrimination. The word 'discrimination' has been defined under Article 13(5) of the Constitution to mean that, among other things, a person should not be treated on the basis of sex such that certain categories of people are regarded as weak or inferior and are subjected to restrictions and conditions and the other group of persons are treated differently.²¹ Therefore, there is sufficient space and mandate to adopt and enforce laws and policies that prohibit violence against women and children. Failure to protect women from acts of violence that are committed against them is clearly discriminatory.

Articles 12-29 generally, incorporate the Bill of Rights and Duties, which set out the basic rights and duties of citizen which are broad enough to assert and protect rights holders against GBV. Every citizen has a duty to respect women's rights. These articles echoes the right to equal protection under the law 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.²²

The courts of law have shown that, the Bill of Rights of 1984²³ has to be implemented at any cost. This is witnessed by Judge Mwalusanya (as he then was) in the case of *Ephraim v Pastory*²⁴ where the judge said that

21 As provided under article 13(5) of the Constitution of the United Republic of Tanzania of 1977, as amended from time to time; The ambit of the definition of discrimination is broad and encompasses the definition adopted by the Convention on the Elimination of All Forms of Discrimination Against Women of 1979-CEDAW

22 *Loc. cit.* TAWLA, p 12

23 Fifth Constitutional Amendment Act, 1984, i.e. the Bill of Rights

24 High Court of Tanzania at Mwanza, 22 February 1990 (Civil Appeal no 70 of 1989) (Unreported)

...since the Bill of Rights was incorporated in our 1977 Constitution, Act no 15 of 1984, by article 13(4) discrimination against women has been prohibited. And the Universal Declaration of Human Rights, 1948, which is part of our Constitution by virtue of article 9(1)(f) prohibits discrimination based on sex as per article 7. Moreover Tanzania has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. That is not all. Tanzania has also ratified the African Charter on Human and Peoples' Rights, 1981, which in article 18(3) prohibits discrimination on account of sex. And finally Tanzania has ratified the International Covenant on Civil and Political Rights, 1966, which in article 26 prohibits discrimination based on sex. The principles enunciated in the above-named documents are a standard below which any civilized nation will be ashamed to fall. It is clear from what I have discussed that the customary law under discussion flies in the face of our Bill of Rights as well as the international conventions to which we are signatories.

This appeal was about women's rights under the Bill of Rights. Women do not want to be discriminated against on account of their sex. In this case, a woman, one Holaria d/o Pastory, who is the first respondent in this appeal, inherited some clan land from her father by a valid will. Finding that she was getting old and senile and had no one to take care of her, she sold the clan land on 24th August 1988 to the second respondent Gervazi s/o Kaizilege for Shs 300 000. The second respondent is a stranger and not a clan member. Then on 25th August 1988, the present appellant Bernardo s/o Ephraim filed a suit at Kashasha Primary Court in Muleba District, Kagera Region, praying for a declaration that the sale of the clan land by his aunt, the first respondent to the second respondent was void as females under Haya Customary Law have no power to sell clan land. The Primary Court agreed

with the appellant and the sale was declared void and the first respondent was ordered to refund the Shs 300 000 to the purchaser.

Holaria was not satisfied with the decision of the primary court, hence appealed to the District Court. However, the Senior District Magistrate of Muleba, Mr LS Ngonyani, did not think the courts were helpless or impotent to help women. He took a different stand in favour of women. He inter alia, said in his judgment:

...the respondents' claim is to bar female clan members on clan holdings in respect of inheritance and sale. That, female clan member is only to benefit or enjoy the fruits from the clan holdings. I may say that this was the old proposition. With the Bill of Rights of [1984] female clan members have the same rights as male clan members.

The learned judge stated that the first respondent had the rights under the Constitution to sell clan land and that the appellant was at liberty to redeem that clan land on payment of the purchase price of Tanzanian shillings 300 000. That has spurred the appellant to appeal to the High court, arguing that the decision of the District Court was contrary to the law. Judge Mwalusanya like the District Court held that the sale was valid. The appellant can redeem that clan land on payment of the stated amount of Tanzanian shillings 300 000 within six months. The appeal was dismissed with cost.

The Constitution justifies protection of the rights of women under article 13 and court practices show that women are protected both in text and context. However, that protection available in the Constitution is not women specific. The Constitution is silent when it comes to VAW. It is stated that it is good to have a general protection, but that invites less protection to specific group of women

3.2 The Penal Code, Cap 16 and VAW incidents

Penal Code, Cap. 16 R.E. 2002 is one of the oldest laws in Tanzania. It was incepted long before Tanzania's independence from Britain in 1961.²⁵ 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, Act No. 4 of 1998.

The SOSPA amended several written laws, making special provisions in those laws²⁶ 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, *inter alia* to strengthen the mechanism for using the criminal justice system to reinforce the legal regime protecting women's dignity.²⁷

The SOSPA introduced and widened the offences of sexual violence (rape), trafficking in persons; sexual harassment; and a prohibition on FGM of which most of these offences was introduced for the first time in Tanzania to take legislative action against the practice. SOSPA also introduced severe punishments for sexual offences including imposition of a minimum sentence of 30 years imprisonment and compensation to 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 person's role in the rape. Others include gross indecency, with a punishment of not less than ten years imprisonment; sexual

²⁵ Penal Code, Cap. 16 is part of received laws dating back to 1920s during the British trust territory. Received laws were recognised in the Order in Council 1920s via Reception Clause

²⁶ The laws amended include the Penal Code, Criminal Procedure Act, Cap 20; Evidence Act, Cap 6; and Children and Young Persons Act, Cap 13

²⁷ Loc. cit. TAWLA, p 15

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.²⁸ This is evidenced in the case of *Seif Mohamed El-Abadan v Republic*²⁹, whereby the appellant, Dr. Seif Mohamed El-Abadan, was convicted of rape contrary to sections 130(3)(c) and 131(1) of the Penal Code, Cap. 16 (R.E. 2002). In this case it was alleged that on 14th November, 2006 at Magunga hospital in Korogwe District, the appellant abused his office as a doctor and staff of the said hospital and had a carnal knowledge of a patient, one Stenala Pwere. Upon conviction, the appellant was sentenced to the mandatory sentence of 30 years imprisonment.

As shown from the provisions of the Penal Code and its amendments in 1998, women are clearly protected. However, that protection is only available when it comes to issues of sexual related offences. The Penal Legislation is general law covering general penal matters; it does not cover private matters like property ownership etc. It is argued that there is a need to expand the available protection in the Penal Code and from international instruments through enactment of specific legislation on the subject of VAW.

3.3 The Evidence Act, Cap 6 and the effort to address VAW

The SOSPA amendment affected the Evidence Act, Cap 6 by widening section 127 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. 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 given

²⁸ Ibid p.16

²⁹ (CA) Criminal Appeal No.320 of 2009, at Tanga; See TAWJA, Case Law Manual, Vol.II, TAWJA, pp. 67-70, (undated)

by children in sexual offences as long as they are assessed of being able to understand the nature of the proceedings and give credible evidence through a *voire dire test*. This was witnessed in the case of *Onesphory Materu v Republic*³⁰, where it was argued in the Court of Appeal that

...The High court addressed the point of self warning of the court by tracing the history of the law before and after the advent of section 127(7) of the Evidence Act as amended by Sexual Offence Special Provisions Act, Number 4 of 1998. Prior to the amendment, there was a requirement for the court to warn itself of the dangers of basing a conviction on the uncorroborated evidence of a child where a sexual offence was involved. After the amendment, the need for the warning was done away with. The only burden imposed on the court now is to give reasons that it is satisfied that a child of tender years or the victim of the offence is telling nothing but the truth.³¹

That seems to be helpful because the data from the police shows that the highest number of sexual victims among both female and males below the age of 15 years doubled between 2004 and 2008 countrywide.³² Therefore, the Evidence Act brought in the legal system the protection that has been waited for a long period of time. Nevertheless, the law is silent on specificity of the VAW. It is through judges and magistrates to interpret the law to cover situations of VAW. This shows that there is a need to legislate specific legislation regulating VAW.

³⁰ (CA) in Tanga, Criminal Appeal No. 334 of 2009; See in the Case Law Manual Volume II reported by TAWJA page 64 (undated); 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 Women Judges (IAWJ), Dar es salaam (undated) page 57

³¹ 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 Women Judges (IAWJ), Dar es salaam (undated)

³² Ibid

3.4 The Criminal Procedure Act, Cap 20 in addressing VAW

The Criminal Procedure Act (CPA) contains specific provisions relevant to Violence against Women including: mode of searching women as per 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.

Also under section 55(1) and (2) of the CPA provides for treatment of persons under restraint; a person under restraint is entitled to be treated humanely and with dignity, and shall not be subjected to cruel, inhuman or degrading treatment. These provisions support the move on violence against women. Women should be treated humanely and with dignity. Nonetheless, this protection sometimes confuses law enforcers. This may be attributed by the fact that not all people know the provisions of the CPA, let alone its enforcement. Easy enforcement of violence against women depends on a specific legislation.

3.5 The Prevention and Combating of Corruption Act, 2007 in overcoming VAW

The Prevention and Combating of Corruption 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 favours in exchange for official services.³³

This legislation has strengthened the legal regime on violence against women by expanding the scope of sexual offences as

³³ Section 125 of the PCCA which states that, any person being of position or authority, who in the exercise of his authority, demands or imposes sexual favours or any other 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

provided in the Penal Code, Cap 16. The 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. This has been shown in the case of *Mussa Zanzibar v. Republic*³⁴ where the appellant was a traditional healer. He allegedly raped one Siwema Rusumba on the pretence he could restore her menstrual period which had disappeared for some time. He led the victim to distant cross roads, ordered her to undress, held her by the neck and inserted his penis in her private parts. The appellant gave a sworn testimony claiming that the complainant consented to sexual intercourse. The issue before the court was whether the complainant consented to the sexual intercourse by the traditional healer. It was held by the court that the victim did not consent to the sexual intercourse with the appellant and the appellant abused his position of authority as a traditional healer in extorting sex.

Users of legal services, particularly women, young men and the poor elders are the victims of those who need a person in authority to exercise the authority in their favour. It is an obstacle to accessing justice including sexual harassment faced against service users and the employees in the legal system, demand for monetary and sexual favours as preconditions for obtaining bail or favourable judgment or employment benefits. For example, in the case of *Onesphory Materu v Republic (supra)*, 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 filed charges giving the release note as part of her evidence of the illicit unfulfilled

³⁴ Criminal Appeal No 287 of 2012, Court of Appeal of Tanzania (unreported); See Tanzania Women Judges Association (TAWJA), Case Law Manual Volume II reported by TAWJA (undated)

promise. The court found the appellant guilty, convicted and sentenced him to thirty years imprisonment, twenty-four strokes of the cane and an order that he pays shs. 700,000/= as compensation to the complainant.

An issue of abuse of power by adults in authority to obtain sexual favours from girls of tender age is a matter of concern in Tanzania. It happened in the famous case of *Francis Nguza alias Babu Seya and others v. R*³⁵ 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 refuse or told anyone about it. Eventually, two of the charged perpetrators were acquitted while the first and second appellants were convicted and sentenced to life imprisonment. Each of the appellants was also ordered to pay a compensation of Tanzania shillings two million to each of the ten complainants.

The PCCA law intends, apart from other things, to protect women from VAW. Nevertheless, the law regulates matters of corruption and associated matters. Therefore, it is difficult to invite the law in every case. The need for specific legislation regulating VAW issues cannot be avoided.

3.6 Employment and Labour Relations Act, 2004 and VAW issues

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

The ELRA prohibits discrimination on the basis of one's sex or gender role.³⁶ The ELRA prohibits direct and indirect discrimination in the work place including discrimination on the basis of sex, gender, pregnancy, marital

³⁵ See: *Nguza Viking @ Babu Seya and others vs. Republic (CA)* Criminal Appeal no 56 of 2005

³⁶ See section 7(1), (4) and (5), 20 and 33 of the ELRA

status disability, HIV/AIDS and age³⁷. These specific gender-sensitive provisions create an enabling environment to guide both employers on appropriate boundaries so as to know when the line is crossed between execution of duties and persecution or sextortion.³⁸

Although these rights are not in the criminal realm, they touch on important specific issues relating to women and girls. They 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 conditions ignored.³⁹ However, the law as the title speaks; it covers issues of employment and labour relations only. Sometimes, it is difficult to enforce issues of VAW through the Employment and Labour Relations Act.

3.7 The Anti-Trafficking in Persons Act, 2008 in addressing VAW

A number of international instruments⁴⁰ have been adopted in order to tackle the issue of trafficking with increasing emphasis on human rights perspective from the angle of protection of victims.⁴¹ Among those instruments, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2002 (Parlemo Protocol)⁴² is regarded as the most significant and comprehensive one.⁴³ The Tanzania Anti-Trafficking in Persons Act, 2008 borrows a leaf from this instrument. It

³⁷ *Ibid* Section 7

³⁸ *Loc. cit.* TAWLA, p 23

³⁹ This rationale is further explained by section 33 of the EALR which gives the details of maternity leave

⁴⁰ These includes, 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. (Quoted from TAWLA report September 2014)

⁴¹ Muntarhorn, V. *Combating Migrant Smuggling and Trafficking in Persons, Especially Women: The Normative Framework Re-Appraised: Migration and International Legal Norms*. P. 153

⁴² The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15th November 2000. See at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

⁴³ *Loc. cit.* TAWLA, p.24

has been enacted as a way of domesticating this Parlemo Protocol and others especially CEDAW.⁴⁴

Article 4 of Maputo Protocol provides that every woman shall be entitled to respect and the integrity and security of her person. The protocol 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.⁴⁵

The enactment of the Anti-Trafficking in Persons Act, 2008 is the result of domesticating and implementing of those international conventions. The elements of anti-trafficking in persons were introduced by SOSPA to specifically address Trafficking. The said new section⁴⁶ describes what trafficking is and makes it an offence punishable by imprisonment for no less than twenty years and not exceeding thirty years.

The issue of trafficking was extensively elaborated in 2008, through the Anti-Trafficking in Persons Act, 2008. The enactment of 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.⁴⁷ The

44 For instance Article 6 of CEDAW provides that 'State parties shall take all appropriate measures, including legislations, to suppress all forms of traffic in women and exploitation of prostitution of women.'

45 Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (September 13, 2000); reprinted in 1 Afr. Hum. Rts. Lj. 40, entered into force 25 November 2005. (Quoted from TAWLA Report September 2014)

46 Section 139A of the Penal Code, this section was introduced in the Penal Code through SOSPA in 1998.

47 See section 4(5) of the Anti-Trafficking in Persons Act, Act No. 6 of 2008, provide for a punishment for a person who commits acts of trafficking. Such person is liable to pay fine of not less than five million shillings but not more than one hundred million shillings or to imprisonment for a term not less than two years and not more than ten years or both. Also section 5(3) provide for punishment for persons who did acts that promote or facilitate trafficking in persons is liable to a fine of not less than two million shillings but not more than fifty million shillings or to imprisonment for a term of not less than one year but not more than seven years or both. Further section 6(4) provide for the punishment for the person who committed severe trafficking in person is liable to a fine of not less than five million shillings but not more

law as it reads is good, but it only regulates issues of anti-trafficking of women and girls and therefore provides less protection on VAW generally.

4. GAPS IN ADDRESSING VIOLENCE AGAINST WOMEN IN TANZANIA

Despite those and other notable legal reforms, the social and legal protection of women seems to remain fragile. This situation is partly attributed by presence of bad laws, some of which were named in the Human Development Trust Final Report on Gaps in Policies and Laws that perpetuate GBV in Tanzania; June 2011⁴⁸. Such laws have remained in force all the time.⁴⁹ The following are some of the laws with weak or bad provisions or poor enforcement mechanisms as far as protection of women against violence is concerned.

4.1 Constitution of the United Republic of Tanzania of 1977

The Constitution⁵⁰ provides for the Rights and Duties, which bars discrimination based on sex. It has been argued that the Bill addresses only the *de jure*⁵¹ and not the *de facto*⁵² since discrimination is still rampant in Tanzania. This is because there are no enforceability mechanisms in place. This falls short of the definition of CEDAW which requires state parties to take steps in putting enforceable mechanism by law. The enactment of VAW legislation is necessary as it will address this gap.

Furthermore, even if the discriminatory laws are being declared unfit for Tanzania legal jurisprudence i.e. they are discriminatory **hence contrary to the Constitution; no further**

than one hundred and fifty million shillings or to imprisonment for a term not less than ten years but not more than twenty years or both. Section 14 and 15 provides for additional punishment including the penalty imposed in the committed offence

48 www.healthpromotiontanzania.org/index.php/en/library/122/Internal-docu accessed on July 2017

49 *Loc. cit.* TAWLA, p xi

50 Through Bill of Rights under articles 12 to 29 of the Constitution of the United Republic of Tanzania of 1977 as amended in 1984

51 Letter of the law

52 The practical effect on the law on the intended population

steps are being taken into consideration. This has been witnessed in *Holaria Pastory case*, whereby judge Mwalusanya found rule 20 of the Rules of Inheritance of the Declaration of Customary Law, 1963, to be discriminatory towards females in that, unlike their male counterparts, they are barred from selling clan land. That is inconsistent with article 13 (4) of the Bill of Rights of the Constitution which bars discrimination on account of sex. Therefore, under section 5(1) of Act 16 of 1984, rule -20 of the Rules of Inheritance was to be modified and qualified such that males and females should have equal rights to inherit and sell clan land. Likewise, the Rules Governing the Inheritance of Holdings by Female Heirs (1944) made by the Bukoba Native Authority, which in rules 4 and 8 entitle a female who inherits self-acquired land of her father to have usufructuary rights only (rights to use for her lifetime only) with no power to sell that land, to be equally void and of no effect.

It was further said that females just like males after the decision of this can inherit clan land or self-acquired land of their fathers and dispose of the same when and as they like. The disposal of the clan land to strangers without the consent of the clansmen is subject to the fact that any other clan member can redeem that clan land on payment of the purchase price to the purchaser and should apply to both males and females. Therefore, the District Court of Muleba was right to take judicial notice of the provisions of section 5(1) of Act 16 of 1984 and to have acted on them in the way it did.

However, the customary law in question has not been changed up to this day. Women are still suffering at the hands of selfish clan members. This makes Constitution toothless. Laws can be declared unconstitutional and still nothing can be done to effect the same.

4.2 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; but has 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. The LMA still sanctions marriage of girls below 18 years contrary to a number of international human rights instruments on the rights of women. It still permits early marriage for a girl child. It allows girls to be married at the age of 15 years provided their parents have consented and in absence of the parents the consent should come from any other relatives.⁵³

This is not only contrary to various international instruments but also to the newly enacted Law of the Child Act which defines a child as a person whose age is below 18 years.⁵⁴

This has also been discussed in the case of *Rebeca Gyumi v AG*⁵⁵ whereby among other argument the court found out The Law of Marriage Act old as it was enacted over 45 years ago. The court went further nullifying section 13 and 17 of the Law of Marriage Act by declaring them null and void as they are against the Constitution. The court also directed the Government through the Attorney General within a period of one year from July 2016 to correct the complained anomalies within the provisions of section 13 and 17 of the Law of Marriage Act and in lieu thereof put 18 years as the eligible age for marriage in respect of both boys and girls.⁵⁶ This is because there is relationship between age of marriage and various types of violence

53 Sections 13(3), 17(1)&2 of the Law of Marriage Act, Act No. 5 of 1971, Cap 29, R.E. of 2002

54 Section 4(1) of the Law of the Child Act, Act No. 21 of 2009

55 Miscellaneous Civil Cause No 5 of 2016

56 This case is on appeal and the decision is not yet to be delivered as per July 2017

for instance beating of young wives, due to jealousy accusation of unfaithfulness and controlling behaviour loom large.

The law also sanctions polygamy⁵⁷ which is highly prevalent cultural practices that foster VAW. This was also discussed by CEDAW Committee and in its Concluding observations, the Committee urges Tanzania to address harmful cultural practices, such as polygamy and bride price, more vigorously.⁵⁸ Since then the situation is still the same. The LMA also do not prohibit spousal beatings, 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. 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/VAW despite the gender blind provisions against bodily assault under the Penal Code, Cap. 16.⁵⁹ Having specific legislation on issues of VAW in place will help to specifically address the sanctions and protection mechanisms on the concerned matters.

3.3 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

57 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

58 CEDAW forty first session 30th June-18 July 2008, CEDAW/C/TZA/CO/6

59 TAWLA, Reviews of Laws and Policies on Gender Based Violence, TAWLA, September 2014, p.10

the court regarding trafficking in persons in Tanzania.⁶⁰ This is due to lack of awareness about the law and lack of pro-active measures by law enforcers. Dealing with the issue of trafficking of women and girls in the specific legislation of VAW will help women and girls feeling comfortable with the matter as the legislation will make sure that the protection mechanisms is friendly.

4.4 Penal Code, Cap. 16

It is very 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 nor 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 Police and judiciary, such offences include common assaults,⁶¹ and assault causing actual bodily harm.⁶² The common assault is defined as an act by *'any person who unlawfully assaults another.'* On the other hand, assaults are defined as acts committed by any person that causing actual bodily harm. 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

60 *ibid*

61 Section 240 of the Penal Code, Cap 16 of the Laws of Tanzania, R.E. 2002

62 *Ibid* Section 241

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 such as slapping, arm twisting and pinching 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 19.⁶³

Other offences are rape,⁶⁴ attempted rape,⁶⁵ defilement of idiots and imbeciles,⁶⁶ abduction of girls under 16 years of age,⁶⁷ sexual assaults of persons and indecent assault on women,⁶⁸ acts of gross indecency between persons,⁶⁹ sexual exploitation of children,⁷⁰ defilement by husbands of wife under 12 years,⁷¹ grave sexual abuse,⁷² sexual harassment,⁷³ procuring women and girls for prostitution,⁷⁴ trafficking of persons,⁷⁵ and procuring defilement.⁷⁶

63 According to article 1 of CEDAW 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 political, economic, social, cultural, civil or any other field. Also General Recommendations (GR) No 19 of CEDAW aims at the elimination of all forms of discrimination against women; General Comments 6 of the GR 19 says that, the definition of discrimination provided by CEDAW includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty

64 *Op. cit.* Section 130

65 *Ibid* Section 131

66 *Ibid* Section 137

67 *Ibid* Section 134

68 *Ibid* Section 135

69 *Ibid* Section 138A

70 *Ibid* Section 138B

71 *Ibid* Section 138

72 *Ibid* Section 138C

73 *Ibid* Section 138D

74 *Ibid* Section 139

75 *Ibid* Section 139A

76 *Ibid* Section 140

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 include⁷⁷:-

- 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 depend 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 Tanzania Police Force Female Network

77 *Loc. cit.* TAWLA, p.12

(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.
- k) Due to lack of effective referral and coordination mechanisms between the police force (investigators); Director of Public Prosecutions (DPP) office (prosecutors); and other criminal justice service providers, a lot of GBV cases are lost along the way.

4.5 Employment and Labor Relations Act, 2004

There are no guidelines 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.

4.6 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 homes especially in urban areas.

4.7 Customary Law Declaration Order, G.N 279/ 1963 and G.N. 436/1963

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.

Almost everything contained in these Orders 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. This was also argued in the case of *Ndewawiosia d/o Ndeamtzo v. Imanuel s/o Malasi*,⁷⁸ where the facts of the case was that, the plaintiff, the youngest daughter of deceased and the only unmarried daughter, appealed against a judgment awarding deceased's land to defendant, the nephew of deceased. Deceased died twenty years ago survived by his five daughters, four of whom had married, and by the illegitimate son of plaintiff, whom he had recognized. Defendant bases his claim to the land on the fact that females are not entitled to inherit clan land and on the assertion that shortly before his death the deceased had asked defendant to take charge of the land. Both plaintiff and defendant are Wachagga. It was held that, traditionally, among the Wachagga and various other tribes of Tanzania, women were disabled from inheriting the property of their fathers in order that such property would stay within the clan. The court went on to say that the provisions of the Restatement of Customary Law [G.N. 436 of 1963, Cap. 333 of the Laws] are somewhat contradictory and do not appear to terminate this disability. Paragraph 29 declares a daughter to be a principal heir if the deceased has left no sons, but paragraph 20 provides, "Women can inherit, except for clan land, which they may receive in usufruct but may not sell". The disability preventing females from inheriting has been abolished in other areas of Tanzania. The Court stated,

78 (PC) Civ. App. 80-D-66, 10/2/1968

"It is quite clear that this traditional custom has outlived its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or color. On grounds of natural justice daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, on the basis of equality."

This case shows how even courts have been tried ever since to outlaw discriminatory laws. But the efforts ended in vain. Therefore, if the applicability of customary laws in the judicial system is necessary, then it has to be clearly stated that, the application of such laws should not be inconsistency with the Constitution; and 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.

4.8 Inheritance and Succession Laws⁷⁹

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.

3.7.1 Inheritance Aspects of Customary Law

With particular regard to gender equality, the inheritance law regime of customary law⁸⁰, favors men and especially first-born males who get the lion's share of the estate. Women

79 A whole of this analysis was copied from TAWLA, Reviews of Laws and Policies on Gender Based Violence, TAWLA, September 2014, page 24-25

80 *The Restatement of Customary Law Declaration Order*; G.N. 436 of 1963, Cap. 333 of the Laws

can inherit if there are no male offspring; women can inherit only as daughters from the father's estate and not as wives from their husbands. Moreover, even when there are 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.

This was shown in the landmark case of **E.S & S.C. v. United Republic of Tanzania**⁸¹. The case concerns the plight of two widows in Tanzania (E.S. and S.C.) who, under Tanzania's customary inheritance law, were denied the right of inheriting or administering the estates of their late husbands. Thereafter they were, along with their minor children, evicted from their homes by their in-laws. The submission alleged that millions of other women in Tanzania remain governed by discriminatory customary laws, and experience the same violations encountered by the two women in this case.

In its decision the Committee criticized the patrilineal inheritance law (inheritance by persons related through male kin) that left E.S. and S.C. "economically vulnerable, with no property, no home to live in with their children and no form of financial support." It was noted that such a state of vulnerability has restricted the economic autonomy of the two women preventing them from enjoying equal economic opportunities. The Committee emphasized that women's equal rights to own, administer and enjoy property is "central to their financial independence and may be critical to their ability to earn a livelihood and to provide adequate housing and nutrition for themselves and for their children, especially in the event of the death of their spouse".

The Committee held that Tanzania, by condoning legal restraints on inheritance and property rights that discriminate against women, had violated several articles under the Convention on the Elimination of All

81 CEDAW/C/60/D/48/2013 Communication No. 48/2013

Forms of Discrimination against Women (CEDAW), including, among others, provisions pertaining to equality before the law [15 (1), 15 (2)], the right to bank loans, mortgages and other forms of financial credit [13 (b)], and the same rights for both spouses in respect of the ownership, management, administration and enjoyment of property [16(1)(h)]. In reaching its conclusion, the Committee also considered a number of its general recommendations,

particularly No. 29, which explicitly prohibits disinheritance of the surviving spouse.

The Committee then called on Tanzania to grant E.S. and S.C. appropriate reparation and adequate compensation, commensurate with the seriousness of the violations of their rights. Moreover, the Committee urged Tanzania to repeal or amend its customary laws, including on inheritance, to bring them into full compliance with CEDAW requirements.

Furthermore, the Tanzania inheritance laws are discriminatory against Children born out of wedlock as they are not entitled to inherit from their father unless they have been legitimized and recognized by the said father's clan or family.⁸²

The whole process of customary inheritance is discriminatory in nature. 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.⁸³

Women are being discriminated because they are women. They only have usufructuary right on land,⁸⁴ this is contained in the Laws of

⁸² This rule has been modified by the Law of the Child Act, 2009, Act No. 21 of 2009

⁸³ Rules 27 and 66A of the *Restatement of Customary Law Declaration Order of 1963*

⁸⁴ See *Ephraim v Pastory*, High Court of Tanzania at Mwanza, 22

Inheritance of the Declaration of Customary Law, 1963, which in rule 20 provides that:

Women can inherit, except for clan land, which they may receive in usufruct but may not sell. However, if there is no male of that clan, women may inherit such land in full ownership.

Therefore, women are being infringed of their right to own property freely out of inheritance as opposed to men. It is important to have a specific law which will cover all aspects of women socially, economically and politically in order to reduce VAW.

3.7.2 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 Will⁸⁵.

Everything about this matter is governed by the Holy Quran. According to Islamic law a daughter inherits half of the son's share, while widows are entitled to 1/6 of the estate.⁸⁶ In practice, Islamic law regime is 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

February 1990 (Civil Appeal no 70 of 1989). See also *Ndewawiosia d/o Ndeamtzo V. Imanuel s/o Malasi* (PC) Civ. App. 80-D-66, 10/2/68, whereby the court held that, *traditionally, among the Wachagga and various other tribes of Tanzania, women were disabled from inheriting the property of their fathers in order that such property would stay within the clan. The provisions of the Restatement of Customary Law [G.N. 436 of 1963, Cap. 333 of the Laws] are somewhat contradictory and do not appear to terminate this disability. Paragraph 29 declares a daughter to be a principal heir if the deceased has left no sons, but paragraph 20 provides, "Women can inherit, except for clan land, which they may receive in usufruct but may not sell"*

⁸⁵ See the case of *Naima Ibrahim as a Trustee of Mahamud Abdur Rasul Ismail v. Isaya Tsakiris*, Civil Appeal No. 119 of 2009, In the Court of Appeal of Tanzania at Dar es salaam the judge held that: *there is no dispute that under Islamic or Mohamed law, a testator cannot bequeath more than 1/3 of the estate unless the heirs...*

⁸⁶ Often the problem is quantification of the exact proportion of one sixth of the estate

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.⁸⁷ There is therefore a need to make women and girls aware of the Islamic laws and which portion of estate should be claimed by them. Again, Islamic law allows Muslim scholars with knowledge and understanding of Islam to give legal reasoning in matters that are not covered in Quran and practice of the Prophet Muhammad (P.B.U.H). They can interpret Quran and practice of the prophet Muhammad to avoid VAW.

3.7.3 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.⁸⁸ There is a need for state in Tanzania to abide with CEDAW committee recommendations. In that case, the state will avoid VAW in Tanzania and falls within the state responsibility under CEDAW and CRC.

4 ADOPTION OF VARIOUS POLICIES

Several policies have been adopted to foster gender equality in social, cultural, economic and political spheres, including the Women and Gender Development Policy (2000); The National Plan of Action for the Prevention and Eradication of Violence Against Women and Children, 2001-2015 which provides a framework of actions to be undertaken by

⁸⁷ See the cases of *Innocent Mbilinyi deceased* (1969) HCD 283; and *George Kumwenda Vs Fidelis Nyirenda* (1981) TLR 211, and *Sofia Said and Yusuf Mohamed Musa v Awadh Ahmed Abeid & Three Others* (1992) TLR 29. In *Sofia Said* the Court stated that: *in the Islamic law of succession the principle of proximity is of great importance in that within the limits of each class the nearer of blood excludes the remote.*

⁸⁸ See: the Concluding Observations of the CEDAW Committee of 6th Periodic Country Report to CEDAW, 2008

the stake holders, including the Government, the Development partners, NGOs, Civil Societies, and local communities, to prevent and eradicate violence against women and children; and the Women Protection and Development Policy of Zanzibar (2001). The policies have been formulated to ensure that all women have equal access to rights and services. Additionally, a multi-sectoral Committee to End Violence Against Women, Children and Persons with Albinism was launched in 2011 along with a multi-sectoral action plan.⁸⁹

5 CONCLUSION

Generally, various pieces of legislation have tried to improve the protection of women against violence including sexual violence, domestic violence, sexual abuse/exploitation, trafficking of women and harmful traditional practices. However, the implementation of these laws is still hampered by social pressure to settle the complaints out of court whilst there is no official mechanism for monitoring its impact. Most of violence against women issues is considered to be family issues. In this respect, there is need of having public awareness programs.

It is my view that, there should be a specific law which will address issues relating to violence against women, protection of the survivors or/and victims and lessening procedural standards for handling Gender Based Violence 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. In doing so, there is need of pushing for enactment of specific legislation which will address the issues of VAW. Not only that in place but also, people, law enforcing agencies, Judges and Magistrates should be sensitized on how to handle VAW and related cases sensitively and effectively.

⁸⁹ See: National Human Rights Action Plan 2013-2017, by the Ministry of Constitutional and Legal Affairs, p. 56-59