

EVALUATION OF TANZANIA'S LEGAL SYSTEM FOR SEXUAL OFFENCES AND ITS IMPLEMENTATION IN THE ERADICATION OF VIOLENCE AGAINST GIRLS: LAW AND PRACTICE

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ABSTRACT

The Swedish International Development Cooperation Agency defines gender-based violence as "acts of physical, sexual, and psychological assault that are specifically targeted at individuals or groups on the basis of their biological sex and/or their gender identity within society." However, it may also affect boys and men, most significantly in the form of sexual assault or rape, especially during times of war. It predominantly targets females and girls and is often perpetrated by an acquaintance of the victim.ⁱ

This violence is a symbolic system within the patriarchal framework that generates a variety of routine behaviors that violate the rights of women and reinforce the existing injustice and inequality between the sexes. In contrast to other forms of coercion, this type of hostility targets women on the basis of their gender, which creates a vulnerability or risk factor.

According to the American Psychological Association, children don't have the capacity to consent to sexual activity with adults, and adults who engage in such conduct are condemned. Sexual activity with a minor is never socially acceptable or normal, and adults who engage in it violate the law and commit immorality.ⁱⁱ

Nevertheless, the Association also observed that a solid correlation has been established between childhood sexual abuse and several adult psychopathologies, including alcoholism, drug abuse, and crime and suicide. This tends to further victimize girls who have already been subjected to sexual violence throughout their lives as adolescents and adults. Females who

endure childhood sexual abuse are at a greater risk of developing the aforementioned issues than those who receive professional mental health care.ⁱⁱⁱ

A comparative study of middle-aged women who were subjected to childhood maltreatment and those who were not found that the former incurred significantly higher health care costs.^{iv} It is important to note, nevertheless, that there is evidence suggesting that young women who experienced child sexual abuse may develop more severe behavioral, peer, and emotional problems than their peers in the long run.

VIOLENCE AGAINST GIRLS

Violence against girls is any harmful deed against a girl's will and that is based on socially ascribed differences between male and females. VAG includes acts or threats of such harm or suffering, force or arbitrary deprivation of freedom whether happening in public or private life. Both sexes can be victims but has a great impact on women and girls. It amounts to one of the most common human rights abuses and public health problems in the world.

"It has been shown that violence explicitly violates human rights, particularly those of women and children. Romany asserts that in this regard:"

"To assert that a particular social claim is a human right is to vest it emotionally and morally with an especially high order of legitimacy. Violence is an egregious form of certain infringement of the core and basic notions of civility and citizenship. Violence assaults life, dignity, and personal integrity. It transgresses norms of peaceful co-existence".^v

Violence against girls generally has a great social impact including which has basically led to issues such as; Negative social development of girls in the households, disintegration of social structure of affected communities; and the well being of society as a whole.

The constitution of Tanzania is the mother law, and all laws should be consistent with it. The human rights include the children rights which are found underneath Part III of the constitution of 1977.^{vi} These fundamental rights, which are applicable to everyone without exception, are a

result of the application of the Convention on the Rights of the Child (CRC). While the constitution does not specifically reference sexual assault against women, it does provide that everyone has a right to be treated with respect and acknowledgment for their dignity.

Constitution

Also, the constitution of the United Republic of Tanzania of 1977 provides that “every person has the right to live and the protection of his life by the society in accordance with the law.”^{vii} The section provide as follows:

“13 (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law”.

it is prohibited for a person to be tortured, inhumanly punished or to be given punishment which are grading and humiliating. This general idea has also been listed under CRC Article 6, where each state is required to acknowledge that every child has an innate right to life, protection from harm, and other rights that fall under the categories of personal freedom, privacy, and security, as well as the freedom to move around and the right to expression. In addition to preserving this right, the constitution gives the victim of a human rights violation the option to seek justice in court. According to the constitution, anybody who asserts that a provision of Part III of the constitution or a legislation pertaining to a duty or right owed to him has been, is being, or is likely to be infringed by anyone in Tanzania may institute proceedings for redress in the high court and the High Court shall have the power to declare and order compensation to any concern.

LEGAL REGIME GOVERNING SEXUAL VIOLENCE AGAINST GIRLS IN TANZANIA

The Penal Code CAP 16 R.E 2022

The Penal Code does not define sexual violence specifically, although it does include certain offenses that fall under this category, including rape, indecent assault, sexual abuse, extreme sexual abuse, and sexual harassment. There are several measures in Tanzanian law designed to

safeguard children and others against sexual assault. Penal Code 2022 is one of the laws Tanzania passed in an effort to end sexual assault. The Act's CHAPTER XV addresses offenses against morals.

Sexual Offenses Special Provisions Act, 1998

Initially, this law was enacted specifically to cover all matters relating to sexual offenses, as it was based much on prescribing all matters relating to sexual offenses by providing the meaning of sexual offenses and establishing their punishment thereto. This legislation is significant in terms of providing compensation to victims of sexual offenses. It was enacted to amend existing laws and introduce special provisions to address sexual and other offenses. The aim is to enhance the protection of women and children in Tanzania, safeguarding their personal integrity, dignity, liberty, and security. For instance, it is through this law the provision of section 130 of the Penal Code¹¹, was amended and repealed not only that, the same vein has its impact on several other laws, including the provision of the Criminal procedure Act¹² in which, as far as this study is concerned the said law via section 25, it amended the provision of the Criminal procedure Act¹³, in which it states as follows;

“Notwithstanding the provision of section 348 of this Act, when a court convicts an accused person of a sexual offense, it shall, in addition to any penalty which it imposes, make an order requiring the convict to pay such effective compensation as the court may determine to be commensurable to possible damages obtainable by a civil suit by the victim of the sexual offense for injuries sustained by the victim in the course of the offense being perpetrated them. The enactment of this law has its crucial role, especially when it comes to all matters relating to sexual offenses”^{viii}

However, it should be noted that the Sexual offenses special Provision Act is no longer applicable as it has been incorporated under the provision of every recently amended law which comes into force after its existence. Hence, it was included in this study just for the sake of learning and further understanding.

Generally, sexual offenses result in severe negative impacts on the victims as it affects the mental health of the victim or physiological problem; therefore, to arrest the situation, little effort needs to be taken in regulating sexual offenses affairs, including re-establishing other

specific statutory legislation which will regulate sexual conducts by establishing punishments and the alternative remedy to the victims of sexual conduct.

The Criminal Procedures Act 2022

The Act provides for procedures to be followed in criminal cases such,

when testifying about the crime committed against them, victims of sexual abuse face a variety of difficulties with regard to evidence processes. The Criminal Procedure Act of 2022 generally mandates that cases be heard in public. However, in some situations, such as those involving minors, the court is required to hold a closed-door trial since the offender is a minor. The court may choose to hold closed-door hearings in other unique situations. Since women make up the majority of rape and sexual assault victims, views of trustworthiness may be impacted by gender prejudice and cultural stigma.

Therefore, it is advised that specific defense strategies for accusers of sexual assault be put in place. In camera hearings and privacy protections, rape shield laws that prevent the introduction of the complainant's sexual history into testimony, procedural requirements relating to timing in filing a charge of sexual offenses, and timing guarantees in the context of the conduct of the trial are some of these mechanisms. They also include standards for assuming information from the complainant's testimony or lack thereof, standards for considering evidence that may be submitted, and in camera hearings and privacy precautions.

Reporting Events of Sexual Violence and Having a particular day in a week to Examine Victims of Sexual Violence, as required by the Criminal Procedure Act of 2022, When a sexual offense is committed, the police must be informed right away. Police officers have a responsibility to carry out an investigation and file a case against the perpetrator in court. The majority of rape cases and various other types of sexual assault are carried out in secret, thus there are typically no witnesses to directly confirm the victim's claims.

Therefore, courts must depend on circumstantial evidence, such as medical records that contain proof of sexual activity. Only if the victim is assessed right away after the rape will this be beneficial. In Tanzania, it is customary for rape victims to undergo a weeklong medical examination schedule. This hinders the investigative process since the Medical Officer's

evidence will merely include bruises and the claim that a blunt object entered the victim's sexual organs, but the real question is whether or not the accused actually committed the crime. Most victims and police officers who receive complaints at the police counter are unaware of the obligation of inspecting the victim very after following the rape. They frequently clean victims as a result, tainting the evidence. The issue is made worse by the delay in contacting the police, which prevents the medical officer's findings from supporting a conviction.

Questioning relates to specific instances of sexual activity that are pertinent to the facts at hand, or is likely to refute prior evidence presented by the prosecution, or is likely to explain the presence of semen or the cause of disease or any injury to the complainant, where such information is pertinent to the facts at hand, or is significantly outweighed by the potential harm to the complainant's privacy and sense of personal dignity, or is essential to the accused's defense. The topic is first handled at the clan level due to the shame associated with sexual assault offenses and the reality that the majority of perpetrators are relatives of the victims. After a week, if it is to be reported (most of them are not), it can no longer be supported by evidence since there will be no swab on the victim's genital part.

Private Criminal Investigation Agency, According to the Criminal Procedure Act of 2023, any of the following officers may conduct an investigation into an offense committed in violation of a law: the police, if the law does not specify a specific investigator for such an offense; an officer authorized under any law to conduct an investigation into a specific offense; or an officer authorized by the Director of Public Prosecution.

Private criminal inquiry is not permitted, according to the law. Therefore, our legislation must include a provision that permits private criminal inquiry, relieving such investigating bodies of the burdensome task of conducting criminal investigations. In cases when people have little or no trust in the police or official investigation, private investigation enables victims or family members to undertake their own inquiry.

3.4.4.2 The Law of the Child Act CAP. 13 REVISED EDITION 2019.

To guarantee a child's right to protection and best interests, the Law of the Child Act of 2019 was passed. Forms of sexual violence are also described by this Act; section 3 of the Act describes child abuse as include sexual abuse and violating a child's rights.

The Act also defines child pornography as a form of sexual violence against children and lists child exploitation and prostitution under the category of child trafficking. However, the Act makes no mention of how anyone who commits such offenses should be informed of their legal responsibilities. The Act stipulates that anybody found guilty of sexually abusing a minor faces a sentence of at least fifteen years in jail.

HURDLES OF IMPLEMENTING THE LEGAL FRAMEWORK IN SEXUAL VIOLENCE OFFENSES TO ERADICATE VIOLENCE AGAINST GIRLS IN TANZANIA

Poor Collaborations

Perpetrators of sexual violence against girls have been charged in Courts but ended with being set free for lack of evidence to support charges beyond reasonable doubt as required by the Criminal Procedure Act 2022, specifically, as stated earlier in the previous chapter of this study. Cases of sexual abuse against girls are reported in offices, Police Stations, Ministry responsible for women and children, and non-governmental organizations dealing with children's rights. Most of the time, the prosecution fails to build a solid case against the offender. This is because the legislation does not mandate efficient cooperation between police officers, health service providers, court magistrates, and prosecutors. Additionally, there are gaps in the connections between the child protection system, the legal system, and other support agencies. Because of this, girls are not given referrals to existing resources that can help them to heal. In order to evaluate the leadership and responsibility of institutions, including courts and police, in upholding the law.

Corruption

This is a significant issue with the country's legal systems, which in the context of this research has demonstrated to be a significant roadblock to ensuring justice for young girls who are victims of the illness GBV under sexual assault. The majority of people prefer to deal with "whom they know" to either slow down or speed up the legal or judicial procedure. This encourages unscrupulous individuals to prey on a populace that is mostly uninformed about

legal matters. Law enforcement personnel typically negotiate on behalf of survivors and victims of violence who are unable to "buy" their justice in order to maximize profits from their victims' suffering. Their vocations hardly ever depend on ethical issues.

“Empirical example is drawn to adolescent girl from Tinde who was a form two Secondary School Student, She Testified at Shinyanga Police Gender Desk that she was impregnated by Bodaboda (A married man with a family) of Tinde who was giving her Tsh.20,000 because her parents were unable to afford sanitary Pads, even after reporting a case to the Tinde Police Station the perpetrator was acquitted because parents and the Perpetrator negotiated and the perpetrator paid the money to the family of the Victim and corrupted the responsible police officials.”^{ix}

Pf3 Forms

In actuality, no sexual assault case is taken into consideration in the absence of a Police Form Three (PF3). It is troublesome that a PF3 must be presented in every case of GBV, but it is especially problematic when a sexual offense is involved. First and foremost, it is challenging to meet their admissibility requirements, such as having a designated medical officer perform the position. For instance, in the majority of outlying public health institutions, it is difficult to locate a medical officer of the level required to complete the form. Additionally, the actual form is inadequate for accurately documenting sexual offenses. Health authorities are not encouraged to insert extra information or graphics that may help because the form is just around one third the size of an A4 piece of paper. The options for completing the form are also restricted to superficial injuries and do not include other kinds of injuries. Actually, the pf3 form is necessary filled immediately as the victim gets treated while waiting for further investigations.

One of the main reasons why sexual abuse cases have been dismissed in courts is that the forms are filled out by a non-registered medical specialist who serves GBV victims at lower levels of health facilities where there are no registered MDs, even though the information that is filled out in PF3 form is accurate to support the case. Completion criteria for Police Form No. 3 (PF3 form), in which the legal requirements recognize a registered medical doctor (MD), must be met.^x

Court Delays

The judicial system, on the other hand, can actively discourage victims and their families from seeking restitution in the courts, according to analyzed cases. It is not unusual for families and victims to wait for weeks or even years after a terrible event before the investigation is completed and the case for sexual assault is heard to completion before a qualified and unbiased institution of law. Many parents and survivors may be persuaded that it is not worthwhile the hassle to expose them to a different humiliating process because delays are widespread. The likelihood that crucial evidence may be misplaced or forgotten increases as the case progresses. Unreasonable delays prompted one father to file a formal complaint about the obstruction of his child's case. Assigning a new prosecutor would mean starting fresh. The parent challenged this practice as denying the wronged child justice.

Poverty

The research discovered that economic hardship plays a significant role in the sexual assault of children in Tanzania. For instance, during an interview, one respondent described a victim who, due to hardship, failed to show up for court hearings on time. At other times, the victim of abuse received a summons to testify 80 kilometers late, which made it difficult for them to make it and ultimately led to their loss of the case. Another responder said that the majority of cases are dropped by the courts due to the hardships experienced by the families of the victims, which ultimately forces the offenders to negotiate with the victims in order to avoid going to jail.

Bail Imposition to Perpetrators

The researcher also noted that the issue of bail being imposed has been associated with a high risk in the pursuit of justice in general because "bail is a right of any suspect (GBV perpetrators), thus many cases do not have promising results because after the court releases the perpetrators on bail, they have been either eluding capture, posing a threat to the families of the victims, or negotiating with them to the point where it degrades efforts to end GBV/VAWC because it^{xi}

Falsified Medical Forms/Examinations

The Regional Children's Council Representative brought up this issue at the Regional Women and Children Protection Committee meeting in 2019 and claimed that the issue of falsified/forged medical examination results is increasing teenage pregnancy in a region, making it the first region in Tanzania Mainland to lead by 59% of teen marriage and 34% of teen pregnancy. This occurs when students/children go to health facilities for health tests and a representative of the Regional Children's Council claims that this is escalating teenage pregnancy in the region.

CONCLUSION

The need to eradicate GBV must be given significant consideration, especially when it comes to the need to outsource the investigation of child sexual abuse. Additionally, court procedures must adhere to predetermined legislative requirements. Undoubtedly, the efficiency of the legislation depends on a continuous examination of judicial procedure in light of actual client experiences.

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ENDNOTES

ⁱ SIDA (2015), *Gender-Based Violence and Education*. p1.

ⁱⁱ KALICHMAN, S. C. (1999). *Mandated reporting of suspected child abuse: Ethics, law, & policy* (2nd ed.). American Psychological Association. 1999.

ⁱⁱⁱ Understanding child sexual abuse: education, prevention, and recovery. American Psychological Association Retrieved 13/03/2023.

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^v C Romany 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in R Cook (ed) *Human Rights of Women: National and International Perspectives* (1994) 85. See also RB Bilder 'Rethinking International Human Rights: Some Basic Question' (1969) 1969 *Wisconsin Law Review* 174.

^{vi} Article 12 to 24 of the Constitution of the United Republic of Tanzania 1977

^{vii} The Constitution of the United Republic of Tanzania 1977

^{viii} Section 25 of the Sexual offences Special Provision Act of 1998.

^{ix} Regional plan to support adolescent girls in addressing safe menstrual hygiene management and economic empowerment, access to legal rights through legal system strengthening and addressing food security among adolescent girls GBV survivors

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