

# DEPRIVATION OF THE RIGHT TO LIFE AMONG INTIMATE PARTNERS: CAUSES AND CIRCUMSTANCES ASSOCIATED WITH HOMICIDE ACTS: ANALYSIS OF DECIDED COURT CASES IN TANZANIA

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## ABSTRACT

This paper analyses decided cases on the causes and circumstances associated with the deprivation of the Right to Life among people who are in intimate partnerships.

The paper also discusses important concepts under the deprivation of Right to Life among intimate partners. And also describes the legal framework of the Right to Life under Human Rights at International, Regional and Domestic level.

The findings show that deprivation of the right to life among intimate partners is associated with infidelity acts, suspicion of extramarital affairs, unfriendly communication invoking emotions, controlling behaviours, and loose applicable laws. Female partners are the most vulnerable group and victims of the right to life violation.

Incorporating lessons on Human Rights and emphasis on the Right to life into the curricula of the education system in Tanzania can play a very important gear towards the start of eliminating intimate partner violence (IPV) and its associated consequences since children will be taught from their very early ages the importance of protecting one's human rights. And this can also play an intervention role to children who are exposed to violent acts within their families and communities as well

Since IPV leads to physical and psychological consequences resulting to severe health injuries and leading to some deaths. Then, on the side of survivors, protection of individuals' physical and social wellbeing become a must. This paper finds that the Government need to take affirmative actions including law reforms so that to meet the principles of natural justice in administration of justice within the judicial system, especially on murder charges resulted from intimate partner violence. And community members on the other side, need to respect each other's fundamental human rights.

**Keywords:** Right to Life, Human Rights, Intimate Partner Violence (IPV), Homicide, Violence.

## INTRODUCTION

The Right to life is an inherent basic right that an individual is entitled simply by the virtue of being born alive. Although there are some debates about when should a living being have this absolute right; whether before birth (in the womb) or after birth. This debate is not the focus of this paper. Despite having domestic legislation and human right instruments, homicide still happens among intimate partners. Protection of the Right to Life is of major concern globally and at the local level as domestic violence and intimate partner violence result in the deaths of mostly female partners. Women who suffer from domestic violence and intimate partner violence (IPV) are prone to deprivation of their right to life at times such violence becomes severe resulting in deaths.

Reviewing decided cases on homicide/murder-related charges decided by the High Court and Court of Appeal of Tanzania, has helped to identify and document the causes and circumstances associated to intimate partner violence (IPV) described in this paper.

## THE GENERAL OVERVIEW OF IMPORTANT CONCEPTS

### *Human Rights*

Human Rights are entitlements that human beings are vested automatically by the virtue of being human. They are inherent to all human beings, irrespective of sex, colour, ethnicity, nationality, worship style, language, place of origin, or any other status that a person has including refugee status. Human rights include the right to life, freedom of movement, freedom from slavery and torture, freedom of opinion and expression, and the right to work and education<sup>i</sup>.

### *Right to Life*

The right to life means *the fundamental entitlement of not to be deprived of life arbitrarily or unlawfully by the state or its agents or any other entity. This is the right that needs to be fully enjoyed as an absolute entitlement by each individual by being human.* Article 6 of the International Covenant on Civil and Political Rights<sup>ii</sup> recognizes the inherent right of every person to life, adding that this right "shall be protected by law" and that, no one shall be arbitrarily deprived of life. Everyone has the right to life, liberty, and security of person<sup>iii</sup>.

### *Intimate Partner Violence (IPV)*

Intimate partner violence refers to behaviour within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse, and controlling behaviours. This definition covers violence by both current and former spouses and partners<sup>iv</sup>. Women are disproportionately affected by IPV, with one in three women experiencing some form of violence from an intimate partner in their lifetime.

### *Domestic Violence*

The World Health Organization (WHO) defines Domestic Violence as the intentional use of physical force or power, threatened or actual, against oneself, another person, or a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation<sup>v</sup>. Domestic violence covers people in

intimate relationships and those who are not in intimate relationships but within the family or relationship level.

## **THE LEGAL FRAMEWORK OF THE RIGHT TO LIFE IN HUMAN RIGHTS**

### ***International Legal Framework of the Right to Life***

Human rights are fundamental rights that every person is entitled to universally simply by virtue of being a human. Thus, the right to life becomes the basis and founder of all other human rights. They are intrinsic and should be acknowledged, appreciated, and upheld because they do not require specific legal documentation to be addressed<sup>vi</sup>.

The absence of protection of the Right to life is the absence of protection of all other human rights universally.

The Preamble to the Declaration and the International Covenants on human rights have identical paragraphs, both state that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."<sup>vii</sup> "These rights derive from the inherent dignity of the human person,"<sup>viii</sup> the two Covenants' preambles read. Since fundamental rights and freedoms are inherent, they exist without regard to an individual's or an organization's will. There is no government or state organ that can put human rights to an end, and even the individuals have not been blessed with such mandates<sup>ix</sup>

Article 3 of UDHR<sup>x</sup> provide for the right to life as, "Everyone has the right to life, liberty and security of person" together with Article 6 (1) of ICCPR<sup>xi</sup> provide that, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

### ***Regional Legal Framework of The Right to Life under Human Rights in Africa***

The right to life is one of the most fundamental human rights recognized by international law. It is enshrined in several international and regional human rights treaties and instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR).

Under the legal framework of the African region, the right to life is guaranteed by Article 4 of the ACHPR, which states that every human being has the inherent right to life and that this right shall be protected by law. The article also prohibits arbitrary deprivation of life and provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment.

The African Commission on Human and Peoples' Rights (ACHPR) has also provided some clarifications to Article 4, stating that the protection of the right to life also includes a positive obligation on States Parties to take proactive measures to protect life, prevent unlawful killings and investigate and prosecute those responsible for such acts. Additionally, such measures should be taken without discrimination of any kind, including those based on race, gender, sexual orientation, disability, and socio-economic status.

The right to life has extended extra miles in Africa to specifically mention the right to life for women that should be protected in Africa. Women are the most victims of IPV. The Protocol to the African Charter on Human and People's Rights under the Rights of Women in Africa provide that:

“Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited”<sup>xii</sup>

Furthermore, states should ensure that laws relating to the right to life conform to international human rights standards and that, penalties for violations of the right to life are effective, proportionate, and dissuasive.

In conclusion, the right to life is a fundamental human right under the legal framework of the African region. It is protected by Article 4 of the African Charter on Human and Peoples' Rights, which prohibits arbitrary deprivation of life, torture or inhuman or degrading treatment or punishment. States have a positive obligation to take proactive measures to protect life without discrimination and ensure that their laws conform to international human rights standards.

### ***Domestic Legal Framework of the Right to Life under Human Rights in Tanzania***

States or Governments have the obligation for securing, and where essential making positive arrangements of human rights. Global and regional organizations create guidelines and give a few implies for administering what governments do, or fall flat to do, to implement them. Most of the rights hence concurred upon are identified as being rights of people. In this manner, the people concerned have two essential obligations, to be specific, to defending their rights so that they cannot be abused and not to abuse the rights of others.

In spite of the fact that, it is broadly accepted that State is the most violator of human rights, inquire on infringement of human rights around the world shows that both state and the people are intensely included in infringement of human rights. Both abuse civil and political rights including economic and social and cultural rights. Rough gauges demonstrate that on the normal infringement of human rights by States stand at sixty percent and those by people are at forty percent, and Tanzania is no exemption. Professor Chris Maina have a thinking that, in Tanzania, the history shows the presence of a government with no deliberate intent of advancing or ensuring fundamental rights and freedoms of the individuals all through after independence. He said:

‘Governments in office have always been in a need of a constant push in order to do any pro-human rights action. Otherwise, nothing positive moves from the side of the state...’<sup>xiii</sup>

In the case of *Rev. Mtikila v. Attorney General*, Lugakingira, J. stated that:

“...fundamental rights are not gifts from the State. They inhere in a person by reason of his birth and are therefore prior to the state and the law...modern constitutions like

our own have enacted fundamental rights in their provisions. This does not mean that the rights are thereby created; rather it is evidence of their recognition and the intention that they should be enforced in a court of law...<sup>xiv</sup>

Professor Maina went the extra mile and said that at the beginning, the reasons for the country rejecting the inclusion of a Bill of Rights included, among other things, the need to bring about rapid development of the country and its people. As per Professor Maina, the results of rejecting the inclusion of the Bill of Rights were that fundamental human rights and freedoms were denied and no serious development was achieved and therefore the right to life was also denied automatically<sup>xv</sup> Later when the party and its government eventually accepted to have the Bill of Rights incorporated in the Constitution, there were a number of hindrances to the realization of the rights and freedoms enshrined therein, the most given reasons included that, the Bill of Rights had claw-back clauses and thus there were no mechanisms to be provided to its enforcement. All these were taken care of, as the Enforcement Act was enacted in 1987 and most of the claw-back clauses were taken out in 2005. Despite the observation of the Professor, the fact remains that in the legal history of Tanzania, the inclusion of the Bill of Rights in 1984 is the most significant constitutional amendment. Still, the Government has undertaken various efforts towards the protection and promotion of human rights.<sup>xvi</sup> For instance in 2005, with no any petition from human rights activists, the government decided to remove most of the claw-back clauses in the Bill of Rights.<sup>xvii</sup> Also, an inclusion of Article 129 (1) to the Constitution of Tanzania on the establishment of the Commission for Human Rights and Good Governance to protect human rights in the country<sup>xviii</sup>

### ***Causes and circumstances associated with homicide acts.***

The findings from reviewing 20 decided cases by the High Court of Tanzania and the Court of Appeal having murder/manslaughter charges by partners in intimate relationships and reveal that the driving forces to deprivation of the right to life include; (a) infidelity acts and suspicion of extra marital affairs (b) unfriendly communication invoking emotions (c) Weakness in the laws and the judiciary (d) Excessive alcohol use (e) controlling behaviours

- (a) Infidelity acts and suspicion of extra marital affairs

It is seen that most causes of intimate partners murdering among themselves is due to one partner starting another extra marital relationship with someone else and brings up jealousy towards the other partner and as result mishandling of this resulting into conflicts that escalate into killings

On being cross-examined, he was recorded to say the following words:

"I went to the bus stand at 08:00 pm on 23/05/2012. On the same day the deceased left. The deceased left in a car. I used a motorcycle. I went to the stand at 10:10 pm on that date. What transpired on that day was a devil's job. I pray for forgiveness for having caused the death of the deceased. Yes, I was arrested in a house we used to cohabit with the deceased. I returned home at 00:00 hours on the material date. I went to my sister's home on Saturday. The incident occurred on Wednesday. It is not true I was found in possession of the deceased's mobile phone. I was arrested at 10:10 am on Sunday." When he was further asked by the Court, the appellant said: "Yes the devil pushed me because I suspected the deceased was cheating on me. I found the deceased at the scene of the crime - *Vikindu* area with another man in the bush where I took a knife and stabbed her on the neck. After a while, I went to *Magengeni* and later returned and found her dead." <sup>xix</sup>

(b) Unfriendly communication invoking emotions

The findings revealed that some intimate partners were unable to control their feelings and emotions at the time in high temper. Such individuals find themselves overreacting to some words said by the other partner and feeling the same words as demoting dignity or humiliating. These words become justified under the provocation and therefore even some offenders being reduced their punishments from murder to manslaughter

“A careful read through the testimony of DW1 would reveal that, a large part of their frequent disagreements as a couple, revolved around infidelity. DW1 had stated that he had been told by one of his superiors that he had moved to Nachingwea from Songea for the purposes of working and not to follow his wife. DW1 had asserted further that the deceased had warned him that he had come to the hell of fire on his own accord "**umejileta motoni mwenyewe**" (meaning 'You have brought yourself into the fire')



Chances are, in my opinion, the accused was provoked along those parameters. It was the wisdom of the Court of Appeal of Tanzania in the case of *Richard Venance Tarimo v. Republic* [1993] TLR 142 that the deceased uttered words "**Mimi sichungwi. Kama huko Dar es Salaam una wanawake wengine na mimi nina wanaume**" (*meaning, 'I am not watched after. If you have other women there in Dar es Salaam, I also have other men'*) were considered capable of causing provocation and conviction for murder was reduced to manslaughter."<sup>xx</sup>

(c) The loophole in the laws and the judiciary

It is found that the mitigating factors to be used in court by judges after a person has pleaded guilty can also be unrealistic and thus go against the natural principle of law that justice should not only be done but it should be seen done. For an accused person who killed his wife simply on the ground of provocation by being told mere words considered by the accused as insult and thus over react but being sentenced to one year in jail. This is not appropriate as per the principle of natural justice because justice is only done but not seen to have been done since a person has taken someone's life and while not of unsound mind but because of anger and emotions as in the recent case below;

"...However, since all other elements of the offence have, in my opinion, been successfully proved the position of the law as per section 300(1) and (2) of the Penal Code [Cap 16 RE 2019] is conviction on a minor offence. In the matter at hand, a minor offence to murder is manslaughter. See *Kelvin Haule v. Republic* [2005] T.L.R 53 where the Court of Appeal of Tanzania proffered that "in mathematical terms... killing on provocation is manslaughter..." All said and done, I part ways with ladies and gentleman assessors and hold that in terms of section 300(1) and (2) of the Criminal Procedure Act, the accused is guilty of manslaughter. Consequently, I convict (*the accused*) of manslaughter contrary to section 195 and 198 of the Penal Code.... There is no doubt that as a trained soldier, the accused has exhibited gross irresponsibility. The gun entrusted to him was to be used for security purposes. **His inability to control his anger no matter how provoked he was is a matter for concern.** I am inclined to order a custodial sentence as I am shortly going to do. I hope and trust that the accused will, during his life in prison, learn that there are many ways of controlling one's anger.

This includes commitment to a prayerful life and daily devotion. That said and done, **I sentence you (*the accused*) to one (1) year in jail**<sup>xxi</sup>

Obvious weakness that has been revealed from our findings is that, the laws have not set the limits in delivering sentences after an accused person found guilty and convicted following the mitigating factors. The judge may use their discretionary powers on ways that may not be aligning to the principles of natural justice.

(d) Excessive alcohol use

Alcohol consumption in an excessive manner has shown to have facilitated intimate partner violence and domestic violence in general as this resulted into victimization of women and children leading to some deaths which is deprivation of someone's life. In this paper the deprivation of right to life has been discussed so that to put on the light on intimate partner violence which is hiding under the shield of alcohol drinking

In the case of *Republic v. Elvan S/O Cyprian Luvindu* it revealed that alcohol consumption has led to some irrational acts to intimate partners costing their life

“The accused physically assaulted his romantic partner, with whom he lived, and **drunkenly hit** and kicked her to death. He pleaded guilty to manslaughter but asked for sentencing leniency on the grounds that he was in remand for four years, served part of his sentence, and had dependents. The Court emphasized that this offense was committed ‘in the course of domestic violence’ and made note of the Republic’s commitment to CEDAW and the eradication of violence against women. The accused was sentenced to 20 years imprisonment”.<sup>xxii</sup>

## CONCLUSION

The right to life is a fundamental human right enshrined in international law, including the Universal Declaration of Human Rights (UDHR)<sup>xxiii</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>xxiv</sup> Also cherished under domestic laws such as the Constitution of the United Republic of Tanzania<sup>xxv</sup> and the Basic Rights and Duties Enforcement Act, 1994 (R.E. 2019)<sup>xxvi</sup>. Yet, violence against women and girls, including IPV, remains distressingly

high worldwide, with many women facing life-threatening situations. An estimated one in three women worldwide experience either physical or sexual violence from an intimate partner, often leading to severe injury, disability, or even death.<sup>xxvii</sup>

Intimate partner violence can have long-term physical and psychological effects on survivors, including chronic diseases, depression, suicidal thoughts, attempt murder and committing murder. This can impact a survivor's ability to live a full and healthy life, and may also affect their ability to work or provide for their families resulting in negative consequences to children's social well-being.

## **RECOMMENDATIONS**

Human rights education needs to be included in the learning programs like school in the learning curricula and in colleges, where students will learn IPV as a problem and hindering factor to economic and social well-being of individuals and thus a need to prevent this from occurring<sup>xxviii</sup>

The problem of IPV start with an individual and then affect another within families and children observe or become exposed to such violence and hence learn as they are growing that some toxic norms are just fine as they are being practiced within their families and community and they are used of them. Therefore, this need to be addressed in school curricula for protecting the future generation and reaching the intimate partner violence free society.

It is, therefore, crucial for the government to take affirmative actions to address IPV and associated causes, including implementing policies and laws that protect survivors and punish offenders, providing training and awareness programs to prevent IPV, and ensuring that the justice system delivers justice efficiently and effectively. It is also vital to encourage community participation in addressing IPV, including promoting gender equality, challenging harmful traditional and cultural norms, and increasing access to education and economic empowerment for women. Together, we can work to promote a society that values and respects everyone's right to life, regardless of gender or social status, and strive to eradicate intimate partner violence that leads to homicide acts.

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## ENDNOTES

<sup>i</sup> See United Nations report on Peace, dignity and equality on a healthy planet

<sup>ii</sup> ICCPR, 1966

<sup>iii</sup> See Article 3 of UDHR, 1948

<sup>iv</sup> Anne Bogat, G., Levendosky, A. A., & Garcia, A. M. (2016). Intimate Partner Violence. In *Encyclopedia of Mental Health: Second Edition* (pp. 411–416). Elsevier Inc. <https://doi.org/10.1016/B978-0-12-397045-9.00237-8>

<sup>v</sup> World Health Organization. (2021) “Violence against Women Prevalence Estimates, 2018 – Executive Summary.” World Health Organization, March 2021. <https://www.who.int/publications-detail-redirect/9789240026681>

<sup>vi</sup> Shivji, I. G., (2004) *Constitutional and Legal System of Tanzania: A Civics Source Book*, Mkuki and Nyota Ltd pg. 77

<sup>vii</sup> See First Preambular paragraphs to the International Bill of Rights

<sup>viii</sup> Second Preambular Paragraph to the ICCPR and ICESCR

<sup>ix</sup> Barnabas Albert Samatta [Chief Justice (rtd)], *Judicial Protection of Democratic Values: The Judgment of the Court of Appeal on Independent Candidates*, A Public Lecture delivered at Ruaha University College, Iringa, 25<sup>th</sup> of November 2010, pg. 18

<sup>x</sup> Universal Declaration of Human Rights (UDHR), 1948

<sup>xi</sup> International Covenant on Civil and Political Rights (ICCPR), 1966

<sup>xii</sup> See article 4 (1) of the Protocol

<sup>xiii</sup> Chris Maina Peter (1997) *Human Right in Tanzania: Selected Cases and Materials*, Rudiger Koper Verlag Koln pg. 762

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<sup>xiv</sup> Rev. Mtikila v. Attorney General (1995) T.L.R. 31, at pg. 49

<sup>xv</sup> Chris Maina Peter *Op Cit*

<sup>xvi</sup> See the 8<sup>th</sup> amendment to the Constitution of the United Republic of Tanzania in 1992 that introduced a multi-party system of government and the 13<sup>th</sup> amendment to the Constitution of United Republic of Tanzania in 2000 which gave judicature final authority over the dispensation of justice and adjudication of rights and obligations.

<sup>xvii</sup> See the 14<sup>th</sup> amendment to the Constitution of the United Republic of Tanzania

<sup>xviii</sup> See the 13<sup>th</sup> amendment to the Constitution of the United Republic of Tanzania

<sup>xix</sup> Amani Justine Mpare v Republic (2020) Court of Appeal of Tanzania

<sup>xx</sup> *Republic v. Pascal Yustin Lipita* High Court of Tanzania at Ruangwa (Mtwara District Registry) Criminal Case No 55 (2020), Decision made on 16<sup>th</sup> June 2022 (unreported)

<sup>xxi</sup> *Ibid*

<sup>xxii</sup> Republic v. Elvan S/O Cyprian Luvindu High Court of Tanzania (2005)

<sup>xxiii</sup> 1948, See article 3

<sup>xxiv</sup> 1966, See article 6

<sup>xxv</sup> 1977, See article 14

<sup>xxvi</sup> See Section 4 of the Act.

<sup>xxvii</sup> World Health Organization. (2021). Violence against women. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>xxviii</sup> Moulin-Stozek, M (2020) *Why should intimate partner violence prevention be integrated in sex education?* Journal of Moral Education; Volume 50;Issue 3 Pgs 317-329 <https://doi.org/10.1080/03057240.2020.1837751>