

# Women in Conflict Resolution: Violence Against Women

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## What is Domestic Violence?

THE UNITED NATIONS DEFINES VIOLENCE AGAINST WOMEN as “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 private life.”<sup>1</sup>

Domestic violence is a pattern of behavior between people who are, or have been, in an intimate relationship, which includes the threat or actual use of violence. The abuser establishes power and control over the other person through fear and intimidation as a means of coercion, personal gratification, exploitation, control, revenge or punishment. Its trademark is often repeated abuse over time which increases in frequency and severity with the assailant blaming the victim. The abuse may take the form of battery, rape, incest, sexual harassment, sexual slavery, defilement, torture, kidnapping, threats, emotional and psychological abuse or the destruction of property. All these abuses constitute criminal offences. They occur in every part of the world, in highest numbers to women and children.

Gender-based violence not only occurs in the family and community but is also condoned or perpetuated by the state through a variety of policies and actions.

The following are after-effects of domestic violence:

- Separation/divorce
- Child displacement, leading to street children and early pregnancies
- Transmission of sexually transmitted diseases (STDs) and HIV
- Disabilities following battery
- Death due to physical injuries/and AIDS
- Lack of women’s full participation in development

According to research done by the Women Legal Aid Committee (WLAC) there is no disputing the existence of domestic violence in Tanzania. Problems reported at WLAC and Tanzania Women Lawyers Association (TAWLA) legal aid clinics demonstrate a rampant practice of domestic violence. Although both women and men can suffer from domestic violence, women are more frequently affected. Domestic violence happens in all kinds of homes – rich or poor – and to all kinds of women.

## Major Sources of Violence against Women in Tanzania

In Tanzania, like many other parts of the world, women are subjected to abuse in their own homes by their families and intimate partners. The economic, social and political climates in Tanzania have contributed to the continuance of domestic violence. Some of the factors sustaining and perpetuating domestic violence include:

- a. *The culture of inequality between men and women:* Political leadership in traditional societies was vested in senior males who performed political rites on behalf of the group. For example, elders negotiated marriages for the youth, resolved disputes between family members and acted as the spokesmen to the ancestors. Thus, male elders dominated political as well as religious roles, giving them a special place in the community.
- b. *The practice of bride price:* After paying the dowry, a husband may consider his wife as rightful property. He may believe that he can control her to the point of inflicting physical violence.

- c. *Polygamous marriages*: Women in these marriages experience harsh economic and emotional difficulties as they strive to share the limited resources the husband is able to provide, thereby encouraging outbursts of violence.
- d. *Unequal division of gender roles*: In Tanzania, men are the financially privileged breadwinners, whereas women are auxiliaries. In such a situation, women become dependent on men and are forced to bear with violence since they cannot afford to part with their source of income.
- e. *Lack of awareness of legal and human rights*: Women do not know that domestic violence is a criminal offence. Those who are aware tend not to report the violence to the police because they either distrust police officers or are not prepared to send their men/husbands to jail.
- f. *Other fears*: Most women do not want to see their families separate or are fearful of condemnation by their families or communities should they pursue criminal charges. These and other factors often make women reluctant to file charges or lead them to drop charges.
- g. *Biased practices and laws*: Prosecutors often refuse to prosecute domestic violence abusers because of lack of evidence or laws that benefit men. Women refrain from taking legal action due to the long and inefficient process. Magistrates, especially in rural areas, are unaware or neglectful of laws which should protect women. Instead they rely on customs which ultimately leave victims unprotected with no assistance. In civil proceedings, such as divorce cases, women are subjected to a mandatory reconciliation process, which, more often than not, is prolonged unnecessarily, while the woman becomes susceptible to more violence and danger.

## **Legislation Protecting against Domestic Violence**

The Universal Declaration of Human Rights (1948) was integrated into the Constitution of Tanzania. Article (9) (1) (f) prohibits discrimination based on sex.

In addition, Tanzania has ratified the following:

- The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The African Charter on Human and Peoples Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights (CESCR)

All the above prohibit discrimination on the grounds of sex. Furthermore, the following provisions of legislation are supposed to prohibit domestic violence, among other forms of violence:

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

Article 12 provides for the protection of the freedom and dignity of all persons (men and women), while Article 13 guarantees equality before the law and prohibits torture or inhumane treatment. Article 15 enshrines the right to personal freedom and Article 16 safeguards privacy and personal security. Each of these constitutional provisions prohibits domestic violence.

### **The Law of Marriage Act, 1971**

Section 66 prohibits inflictions of corporal punishment by a spouse on his or her partner. This section, however, is very narrow referring only to corporal punishment. Also the term “spouse” excludes many other potential victims, like partners and children, thereby limiting the provision’s applicability.

### **The Penal Code (Cap. 16)**

The legislation prescribes offences, some of which are related to domestic violence. These are provided for under sections 89B, 168,167,195,196,240-243,246,244,256,264 and include crimes of violent nature, such as assault, murder and intimidation and wife battery, in particular. Other relevant offences are desertion, neglect, negligent spread of diseases, abduction and kidnapping.

### **Sexual Offences (Special Provisions) Act, 1998**

This law was enacted specifically for the protection of women and children and imposes heavy penalties on sexual offenders. The law, however, excludes marital rape.

### **Provisions Perpetuating Domestic Violence**

Although the above legislation prohibits domestic violence, other provisions perpetuate or are insensitive to domestic violence. These are as hereunder:

#### **The Criminal Procedure Act, 1985**

*Section 186(1)* provides that criminal cases shall be held in open court. As a result, women may not bring forth their cases because of the publicity of sensitive personal information such as the marital relationship and description of abuse which may include rape or other sexual offences. This has the effect of traumatising the victim.

Section 163 of the act promotes reconciliation and amicable settlement of disputes. Women are likely to be victims of this provision and may experience great pressure to reconcile even in cases of domestic violence. It is neither realistic nor fair to conduct amicable settlement of offences in a case where the abuser is at large and physically fit while the wife has been crippled and could suffer further abuse.

#### **Customary Law Declaration Order of 1963**

This most notorious law perpetuates domestic violence by incorporating and codifying customary rules which undermine the status and dignity of women. For instance:

- a. *Repayment of bride price*: Provided for under the first schedule of the law (paragraphs 1-65), this law requires the return of the bride price upon divorce. Women who are unable to repay it have to bear the yoke of torture and suffering. In some parts of Tanzania it is alleged that women prostitute themselves to earn money to pay back the dowry that was received by their parents and relatives.
- b. *Status of bride price in marriage*: Studies have proved an indisputable connection between domestic violence, particularly wife battery, and bride price. The practice establishes women's inferiority at the outset of the marriage by reducing the status of women to mere commodities.
- c. *Formation of marriage*: The declaration recognises a marriage upon the consent of the father regardless of consent of the bride. Such marriages often form unequal and unhappy relations between spouses that may later ignite domestic violence.
- d. *Maintenance of the spouse*: Paragraph 62 states that unless a woman has children her right to maintenance is often forfeited. The condemnation of childless women leads to abuse by their husbands.
- e. *Grounds for divorce*: While infidelity and desertion on the part of a husband are not grounds for a woman to divorce, they are grounds for a husband to divorce his wife. Thus, the law regards women as the only adulterers. This perception perpetuates unfair treatment of women.

- f. *Cruelty*: Paragraph 150 gives wide discretion to conciliation boards to decide on divorce or separation upon charges of violence on the part of the wife. Paragraphs 163-164, however, allow a husband to beat his wife. He has only committed a crime if she suffers grievous bodily harm, fractures, permanent disability, permanent deformation or continued cruelty. The wife is then entitled to a meager compensation depending on her injuries.

#### **The Law of Marriage Act, 1971**

Section 17(1) allows parental consent of a marriage when the girl is under the age of maturity, regardless of her refusal. These forced marriages subject many girls to domestic violence. Furthermore, the law allows girl-child marriages, thus raising the risk of abuse for failure to fulfill adult responsibilities. The law, however, sets the marriage age for men at eighteen.

The law also recognises polygamous marriages. Equality between spouses is not found where polygamy is exercised since the right to multi-ple partners is reserved to men alone. The lack of consent on the part of the first wife to a second marriage might lead to domestic violence.

#### **The Sexual Offences Special Provision Act No. 4 of 1998**

The law leaves room for rape and early marriages under the umbrella of so-called “marriage” while, on the other hand, it purports to protect a girl- child.

#### **The Magistrates Courts Act, 1984**

Most of the customary laws are oppressive to women. The MCA allows the primary court, in exercising its customary jurisdiction, to apply the customary law prevailing in that locality.

In order to effectively curb domestic violence in Tanzania, we must reform our laws, which mostly perpetuate domestic violence. In principle, Tanzania does not have a single statute that deals directly with domestic violence. Instead, minor protections are scattered in different statutes. We should work towards a unified law on domestic relations, advocating for restorative justice rather than punitive justice in abuse cases.

### **Challenges and Proposed Solutions**

In brief the challenges and problems can be summarised as follows:

- Inadequate sensitisation on people’s rights
- Lack of sanctions as well as specific and comprehensive laws on domestic violence
- Inadequate commitment of law enforcers, social welfare officers and courts
- Lack of coordinated task force to deal with domestic violence

Alternative approaches to addressing domestic violence include the following methods:

#### **Establishment of Emergency Shelters**

Ms Kathryn Eidmann from Harvard University addressed a women lawyers’ conference in Dar Es Salaam in 2004 describing her experience in a temporary shelter in Boston. Eidmann expressed optimism that by work-ing together, civil society and the government could provide protection and shelter for victims of domestic violence who do not have other options. The policies and aspects of shelters in the United States can be implemented in a modified manner suitable for the problems and cultures of Tanzania.

The primary goal of an emergency shelter is to provide safety to women in immediate danger as a consequence of domestic violence. Other goals include providing support and services to women as well as the opportunity to heal and gain strength to make their own decisions. A shelter may also assist women to secure housing, obtain education and find employment.

The government funds 60 percent of the operating costs of the shelter Eidmann described in Boston. Private donors fund the additional 40 percent. In the case of Tanzania, initial capital might be a barrier.

The church could assist in founding shelters. When I was a child I remember priests who prohibited forced marriage. Some parishes with extra space in their convents sheltered battered wives and girls who had been abducted or eloped with undesirable male partners.

### **Media Campaign**

The media is useful in reaching many people since “information is power.” The following have been used by TAMWA to disseminate information when conducting media campaigns to raise public awareness:

- Electronic media i.e. TV and radio
- Print Media i.e. newspapers and other publications
- Drama/focal news media

Media campaigns may include:

- a. Implementing bang style i.e. using different media followed by press releases, articles and messages through additional resources
- b. Assigning tasks to different media groups
- c. Preparing materials like fliers and newsletters
- d. Raising awareness/empowering media people with skills on various campaigns to participate effectively

### **Community Awareness and Training**

These should be conducted by civic organisations and the church. The church now has radio stations and publishes papers, which could help raise awareness. Even preaching during services could help women and the community at large to know their rights.

As a way of preventing and reducing family violence at a household level, one Tanzanian organisation, Kiota Women Health and Development Organisation (KIWOHEDE), focused on community reconciliation. In Vingunguti Ward in Ilala District, Dar es Salaam, KIWOHEDE:

- a. Conducted social mapping and fact finding with local community leaders, members, families and reconciliation bodies i.e. ward tribunals
- b. Mobilised and sensitised the community and empowered vulnerable women
- c. Formed clubs for reporting family violence within the community

### **Training of Law Enforcement Officials**

Law enforcement officials must be trained and sensitised. The Legal and Human Rights Centre (LHRC) organised a training of trainers project at one time as an alternative approach to addressing domestic violence. LHRC trained officers and officials in the Criminal Investigation Department and Primary Court Magistrates in legal and human rights issues to observe with utmost care the rights of people with whom they interact daily. These were empowered to train colleagues in their respective working areas. The training was very useful to police officials, who at first had considered domestic violence a private family problem unless there were grievous injuries.

### **Family Courts and Family Desk at Police Stations**

I would also recommend the establishment of a family court. Such a court was established in Kenya in December 2000. The family court would deal with the following areas:

- Probate and administration
- Divorce and judicial separation
- Maintenance
- Custody, adoption and guardianship of children
- Legitimacy
- Division of matrimonial property

- Burial disputes
- Citizenship
- Any other jurisdiction conferred by the act of parliament

The family is the basic unit of any society. Positive change in society cannot occur if family disputes are not handled expeditiously and skillfully. However, family disputes are often not given priority in comparison to other disputes because they are considered 'soft' issues.

Tanzania has a particularly high rate of litigation. The establishment of a family court would reduce the work load of an already overstretched judiciary. The HIV/AIDS scourge has turned this priority into an emergency. Many widows and orphans unnecessarily languish in the court corridors looking for solutions to family disputes for many years. A good number die before their family disputes are solved. This creates a vicious circle of more serious tension to follow.

## Conclusion

Women's liberation relates to addressing the problem of domestic violence. But women's liberation has often provoked controversy not only between men and women but also among women themselves. Why should an effort like this be met with resistance even from the very group it is meant to help? Much of the hostility comes from a misunderstanding of what this emancipation is all about. Even among those spearheading the cause there are some grossly mistaken individuals.

The liberation of women and the end to domestic violence are about men and women being accorded equal opportunities to realise their God-given potential. God gave different abilities to each individual, which were not meant to be suppressed but to be utilised for the benefit of the rest of humankind. Mutual benefit comes when all people, male and female, are able to work toward their full potential while at the same time giving room to others to reach their potential.

Men must also play their part in the struggle to end domestic violence. Some women engaged in the struggle have failed to realise that the most important endeavor should be to humanise men so that they participate in the role of caring and live their lives in accordance with the dictates of conscience.

The majority of women have reinforced the misconception that men are in superior roles and therefore are of superior intelligence. To them, equality involves imitating male aggressiveness, insensitivity, lack of discipline and irresponsible behavior to some extent. The nature of women as nurturing, tireless in serving others, peace loving, hard-working and dignified has been challenged in the name of liberation.

The most luxurious item that most children can afford is to be mothered. Some 'liberated' women shun responsibility, insisting on rights without duties. As a result children suffer. Children are denied fathers, even good ones, because the mother's ambition would be restricted in a long-term relationship. Some women wreck havoc on married men, enticing them away from their homes and rendering their children "orphans". Women who have been economically empowered, like men, use money and positions of authority to manipulate others.

I salute women who have fought for liberation. Women who demonstrate true liberation are those fighting for social values, for the preservation of the environment and for the reign of God in the heart of all. Liberated men also exist. However, many labor under the bondage of selfishness. Some women continue to strive to be like these men. The day they succeed shall be the end of humanity. We must be reminded of the words of Mahatma Gandhi, "No people have risen who thought only of rights. Only those did so who thought of duties."

Let the church inform our community that it pays a high price for domestic violence. Businesses lose money due to sick days and the ill health of female employees who are abused. Substantial financial and human resources must be used for domestic violence intervention including law enforcement, health services, court and legal proceedings and social services.

The church must make people aware of their duties and obligations to be God fearing and to value each other, thus obeying the commandment—Love each other. Love thy neighbor.

## **Endnotes**

1 The United Nations National Assembly on the Declaration of Elimination of Violence Against Women, Resolution 48/104, February 1994.

2 Gandhi, Mahatma, as quoted from <<http://www.mahatma.com/phpshowNews.php?newsid=65&linkid=11> (accessed 13 March 2007).