Background

The passage of the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) in 1979 revolutionized advocacy for women’s rights in global, national and local spaces. Subsequent global conferences on women, especially those convened by the United Nations, squarely put women’s rights issues on national agendas. Specifically, the naming of violence against women a human rights violation to be considered as a moral and legal crime by CEDAW, the Vienna Declaration and the Beijing Platform for Action (BoA) reinvigorated local activism against gender based violence (GBV).

The GBV concept has its roots in feminist epistemology, in its articulation of women’s human rights. Specifically, it focuses on violations directed against women and other vulnerable groups and attempts to assess:

•the Provision of GBV services by the state as well as other actors. These include post-rape care; medical care; and legal aid and support services;

•efforts to Prevent GBV by the state as well as relevant actors either through education programmes, putting in place an infrastructure that minimizes incidents of abuse e.g. screening of offenders; or the reduction of secondary victimization;

•the level of Protection afforded to victims and survivors of GBV such as affording them with safe houses or protection orders; and

•State keenness to Promote GBV services such as by making the necessary budgetary and human resource allocations, at all levels, to GBV related services; and enacting and adopting relevant GBV laws and policies. The punitive aspect of the law is an important indicator of the state’s willingness to enforce laws.

Kithaka (2008) describes sexual offences legislations cropping up in the region in the last two decades as intended to prevent and protect people from harmful and unlawful sexual acts. Armed with these International Human Rights instruments, women human rights activists around the world campaigned for legal reform to bring local laws up to universal standards. Chiefly, they engaged the state demanding it to take action to safeguard the personal integrity, dignity, liberty of women and children as required under international law. One area women in Tanzania immediately began organizing around was against sexual crimes committed against women and children. The concern was to protect women against crimes perpetrated by the state or its agents as well as by intimate partners.

Breaking the silence on various forms of violence
against women was the primary advocacy strategy deployed by activists resulting in three main outcomes. Foremost, it led to the increased reporting of GBV incidents in communities, especially among women who had suffered prolonged abuse. Secondly, it led to there being increased attention, outreach services and advocacy on these issues by civil society organizations as well as concerned citizens ensuring greater media coverage of the issues. Notably, the increased advocacy led to the passage of the Sexual Offences Special Provisions Act (SOSPA) in 1998, the first popularly instigated legislative initiative in Tanzania.

More than ten years after the passage of SOSPA, how has the law enhanced protections for vulnerable groups? In this paper, I will use the experience of legal reforms in Zanzibar to explore this question. Specifically, I will look at how the justice system translates and gives force to the legislative intention of the law. The study and conclusions are informed by an extensive review of laws governing morality as well as reported cases in the High Court Criminal Division Registry. Information was also derived from interviews with functionaries in law enforcement and the judiciary, particularly those who deal with GBV matters in Zanzibar, carried out between 2005 and 2006. Another important reference is the GBV prevalence study undertaken in Zanzibar on behalf of the ministry responsible for women and children affairs in 2007.

The genesis of GBV advocacy in Zanzibar

1. Without doubt the critical role of the Tanzania Media Women’s Association (TAMWA) was instrumental in the early successes of GBV advocacy. For greater details see, Lema, E (Ed.) (2008) 20 Years of Tanzania Media Women’s Association (TAMWA).

2. Describing GBV offences of a sexual nature as “crimes of morality” is a colonial legacy and reflects a Victorian concept of propriety with regards to sexual relations.

3. I served as one of the principal researchers for the study. The ministry concerned is the Ministry of Labour, Youth, Women and Children’s Development but since the name changes periodically I will retain the usage of the ministry responsible for women or children’s affairs to identify it. This Ministry acts the national coordinator for gender equality and equity outlining the appropriate mechanisms for gender mainstreaming.

4. Although Zanzibar is part of Tanzania, it is semi-autonomous and has a separate legal and judicial system.

5. Traditional healers or witch doctors, like the shaman, advised people infected with HIV that sleeping with a virgin, would cure them of the virus. Equally, they advised the emerging crop of local businessmen that sleeping with young virgin girls or boys would increase their luck in business. While many women and children were being sexually violated some were being killed for their sexual body parts, another practice associated with poverty cures.

At another level the ‘outing’ of sexual offenses can be linked to the dual pandemic of HIV/AIDS and poverty which were intensifying in the early nineties as Tanzania gradually abandoned state sponsored welfare policies and programmes. The Tanzanian media raised the alarm about “cleansing” practices to either rid oneself of the HIV virus or the poverty bug. Journalists linked the rapid increase of sexual abuse of young children to HIV/AIDS after they learnt that some wagganga advised people infected with HIV that sleeping with a virgin, would cure them of the virus. Equally, they advised the emerging crop of local businessmen that sleeping with young virgin girls or boys would increase their luck in business. While many women and children were being sexually violated some were being killed for their sexual body parts, another practice associated with poverty cures.

In Zanzibar, the arrest and incarceration of one Bwana Kitangi who was long suspected of defiling and sodomizing young children provided an impetus for civil society organizations to pursue legal reforms in the law with vital support from the Ministry responsible for women and children affairs. Certainly, the link between women’s vulnerability to violence and HIV infection prompted calls for greater measures to minimize women’s and children’s risk to HIV infection through sexual violence. Likewise, the egregious nature of sexual crimes against women e.g. rape, gang rape, sodomy, ravishing of sexual parts and the like raised added security concerns for women.

Compared to the Mainland, GBV advocacy in Zanzibar took off much later. This could be explained to, among other things, the reluctance to bare sexually explicit content in public, as well as the relative low reporting of GBV incidents in law enforcement bodies and the media. Like on the Mainland, it would be the work of the Tanzania Media Women’s Association’s (TAMWA) Zanzibar Office that would set the spark. The association’s coverage of the government’s practice to incarcerate pregnant un-wed mothers surfaced some of the human rights violations women and children continued to endure in the isles contrary to the spirit of CEDAW. An effectively orchestrated media campaign called for legal reforms against discriminatory legal provisions in various laws that penalized or discriminated against women on account of their sex.
The Sexual Offenses (Special Provisions) Act No. 7 of 1998

The Sexual Offenses (Special Provisions) Act was passed amidst public outcry and intense lobbying against what many decried as immoral crimes committed against vulnerable groups. Although women were disproportionately affected, the attacks on children helped to win public sympathy over the issue. Hitherto its passage activists’ attempt to prosecute abusers of sexual or domestic violence often failed because of laws that were outdated or inappropriate to protect certain groups like children and people with disabilities. Similarly, the successful prosecution of GBV cases failed due to the dismissive attitudes of the larger society, as well as the inability of law enforcement bodies to take GBV issues seriously.

Before the passage of GBSPA in 1998 sexual offences were contained in the Penal Decree of 194, a law reflective of colonial preoccupation with morality. Therefore, GBSPA amends this law fundamentally by modernizing it. Foremost, the Act adopts gender sensitive language. Also, it includes both minimum and maximum sentences and expands the option for punishment to include imprisonment, corporal punishment, fine and compensation. In fact, GBSPA makes compensation mandatory upon conviction (§121) a development that could be read to recognize the wrong and harm done to survivors of violence au lieu of blaming them for the violence as was often the case.

In many ways, the SOSPA reflects ongoing concerns with rising and new forms of crimes committed against women and children, not only in Tanzania but across the world such as trafficking for sexual and labour exploitation; sexual harassment and prostitution; and cruelty towards children including compelling them to undergo FGM. It is also an attempt by the government to stay abreast of developments in international Human Rights Law. For example, §148 raises the age of consent to a sexual act for girls to eighteen years while the former law excused such acts, if committed on girls as young as 14, as long as the defiler believed she was older.

The 1998 Act requires a lower standard to prove sexual crimes. Similarly, punishment imposed is more severe. New crimes are also introduced in the law. For example, prostitution, defined as offering the (human) body for consideration, is introduced as an offence and procurement of prostitution is explicitly recognized as a crime. The Act criminalizes non-consensual sex for minors and women including consent obtained by giving money to a child or through threats. Also, it doubles the punishment for acts of gross indecency against minors compared to people of the same age.

Sentences under the 1998 law are much stricter than the former law. Conviction for rape (§120), as well as gang rape (§121A), for instance, is life imprisonment. The law does away with the requirement for corroboration to prove rape demanding only proof of penetration regardless of there being ejaculation or the use of force. Moreover, an accessory to the crime of rape receives the same punishment as the offender. An attempt to carnally know a boy or girl, if convicted, attracts a 25 year sentence with corporal punishment.

The Penal Act of 2004

In 2004, the Zanzibar legislature took the additional step to include GBSPA within the Penal Act with a dual objective: First it would make the law more readily accessible to functionaries in law enforcement and the judiciary; and secondly it would ensure that GBSPA has the same status as crimes in the principal legislation. Offences against morality are contained in Part XV of the 2004 Penal Act and comprise of 39 sections i.e. §124 through §163. Although most provisions of

6. This is a critical fact in view of the more radical demands being presented by a more autonomous women’s rights movement to the establishment as well as to a rather conservative society.
7. For example, see §127, §144 or §145.
8. Also see, §298A of the Criminal Procedure Decree Cap 14. In many cases, courts are also obliged to prescribe fines and award corporal punishment.
9. §156. This includes surrogacy.
10. §153A
11. §145B
12. §145A
13. §120 (3) (a) and (b).
14. §125 (1)
15. The Zanzibar House of Representatives
the 1934 and 1998 legislations are retained, there are significant additions to the 2004 law, reflecting changing social realities, as well as political considerations.

Notably, the 2004 Act introduces new crimes mainly of marital rape (§125(2) (a) and (e); lesbianism (§153); the sexual exploitation of children (§155); same sex marriage (§157); and sexual harassment (§158). However, the law fails to provide the standard to prove a number of offences essentially making it difficult to charge anyone with the crime. For example, under Sections 132, 150 and 152, sodomy is a crime when performed against young boys not when done against women and girls. Nevertheless, the law demonstrates a willingness to break the silence against violence rather than keeping sexual crimes under wraps. Also, it shows a willingness to prosecute people who are otherwise held in esteem like public officials (§125(3) (a)); officials in remand homes (§125(3) (b)); hospital officials (§125(3) (c)); and traditional healers or religious leaders (§125(3) (d)).

While there is an attempt to use gender neutral and gender inclusive language in the law, the law still demonstrates a bias towards the male sexual norm. For example, homosexuality between men is punished more severely (14 to 25 years and a fine at Tshs.700,000 about USD700) than is homosexuality between women (five years and Tshs.500,000 fine about USD500). Moreover, sexual crimes committed against males attract higher sentences than those committed against other groups including women or people with disabilities.

Thus, anyone who indecently assaults a woman or girl, upon conviction is liable to 3 to 14 years in jail (§ 131 (1) and (3)) while for those who assault young boys are liable upon conviction to a jail term of not less than twenty five years (§152). Provisions of this kind indicate a male centric notion of ‘natural’ sexual relations. In the present context of increased advocacy on sexuality based rights such provisions pose an equal protection challenge as to the criminalization to a lifestyle choice between consenting adults.  

### Holes in the Law

GBV laws are scattered in various legislations including SOSPA, the Penal Code/Act, the Education Act, the Law Marriage Act and the Spinster and Single Parent Children Protection Act 2005. However, as a concept GBV is a much broader than what is currently contained in the legal framework where the focus is mainly on sexual crimes. Despite the presence of a robust legislation, reports of GBV crimes, especially sexual crimes, remain high while the conviction rates for sexual crimes and GBV generally remain low in the isles. The Zanzibar GBV study established that 40% of sexual offenses cases fail due to insufficient evidence. Additionally, culprits escape the arm of the law due to institutional weaknesses such as case delays or transfers, improper collection and storage of evidence, faulty charges and conflicting laws and jurisdiction.

A major finding in the Zanzibar GBV Study is the serious conflict between the substantive law with procedure. For instance, the Penal Act provides for a maximum sentence of thirty years or life for rape, but courts of first instance where most matters are heard only have jurisdiction to pronounce sentences of between 3 to 7 years. Most cases heard at the lower courts are rarely appealed availing little opportunity for justice to be done. In addition, whereas GBV cases should normally be heard under criminal jurisdiction, the GBV study found that incidents of GBV are addressed in formal and informal sectors.

16. Undoubtedly, the clamp down on homosexuality was influenced by the tense political climate prevailing in the isles at the time where government policies were attacked by both the official opposition as well as religious groups.
nal structures. Formal structures comprised of the Sheha’s Office; Courts; the Police; the Kadhi’s Court; and Hospitals.

Informal structures comprised of family and religious structures. Each structure is guided by its own set of laws and rules. Medical staff, for example, comply mostly with medical guidelines when carrying out examinations on survivors of sexual assault with very little guidance on what the law says about such assaults. An added dimension to GBV prosecution is Zanzibar’s dual court structure: the normal common law courts and religious courts. GBV is a criminal matter and thus subject exclusively to criminal jurisdiction. However, in practice, the Kadhis Court which is only empowered to hear civil matters regularly hears and adjudicates over GBV matters. Religious structures treat cases of sexual assault as civil cases with little indication that they recognize them as crimes under the law.

Furthermore, public institutions like the police, local government or hospital don’t always treat GBV as a cognizable offence. One Sheha, for example confessed that he took suspects to the police station supposedly only “to scare them so that they realize the gravity of the problem”. The fact that many cases are dropped before they are heard by a competent prosecutor or a court of law is indicative of how the law enforcement machinery approaches sexual crimes. Most institutions investigated were not proactive about addressing GBV incidences but acted only if moved. And even then, rather than enforce the law, most institutions were happy to follow the whims of the families when dealing with GBV incidences.

A review of cases of sexual offences in the High Court Criminal Registry reveals that few victims of sexual crimes are compensated for the harm endured. What purpose is then served to have a progressive legislation when the same is impracticable? Is the situation just a matter of legislative oversight or does it reflect a general reluctance to act decisively on sexual crimes because doing so would implicate men who often assume the role of moral policemen, and by so doing, defeat the notion of women being the weak moral element?*

Early in 2009 the Tanzania Court of Appeals, the highest court on the land circulated its draft rules for comment. These rules deal mostly with procedural aspects of civil and criminal cases. A number of lawyers in Zanzibar complained about the absence of relevant rules in key legislation suggesting that courts in the isles operate without the benefit of clear operational guidance. Anne Kithaka also notes that in Kenya many sections in the legal framework are not operational for lack of regulations to make them effective. For instance Section 39 of SOA requires the Registrar of the High Court to keep a register and data bank of convicted sexual offenders. Likewise Section 47 empowers the Minister to prescribe regulations on the contents of the data bank. Section 329 (A) requires the Chief Justice to make rules and regulations to guide the manner in which Victim Impact Statements can be received and used by the court.

**Absence of Effective Institutional Responses**

Compared to other countries in the region, Tanzania made quick and great strides in so far as legislating against GBV, especially in fighting sexual violence. Nonetheless, efforts to criminalize the same have attracted much resistance, more so from the legislators and even the public officials whose obligation is to enforce the law. While speaking to the national legislature in the January 2009 Parliamentary session, the Minister of Justice is quoted in the media to call for reduced sentences for the crime of rape. Surprisingly, this same Minister, then a Deputy Minister, is quoted in an earlier news piece admitting that at 15 girls are still biologically and psychologically immature to marry or have sex.

17. I am referring here to the Islamic notion that describes women as ‘fitna’ (commonly translated as chaos but in this context as temptresses) which absolves men for any indiscretions they commit while blaming women for any crime against their person by default.

18. The Kenyan Sexual Offence Act only passed in 2006 while in South Africa it was passed 10 years after it was first proposed by the South African Law Commission in 1998. Accordingly, these laws have had the benefit of incorporating major lessons from other jurisdictions.


Yet, cases of sexual and other gender related crimes committed against women and children inundate the ministry responsible for women and children and various civil society actors\(^2\). Moreover, over 75% of all public institutions interviewed during the Zanzibar GBV Study reported receiving cases involving gender based violence (GBV). In over half of these institutions GBV matters comprise 41% of the caseload while in four of the 12 institutions interviewed they constitute over 50% of its caseload. All institutions identified sexual assault as the highest type of complaint coming before them. Attempted rape was identified by 11 institutions, in some institutions comprising about 30% of the caseload.

Women are more likely to report GBV crimes to institutions. Girls are more likely to be victims of sexual violence than women or male children. Interviews held with medical personnel in various district hospitals in Unguja and Pemba confirmed that a high number of female children exhibit prolonged sexual activity which suggests protracted incidences of sexual abuse which is largely unaddressed. The same was confirmed in law reports. Even so, the Zanzibar GBV study consistently found medical examiners not reporting to court to give evidence or prosecutors who rarely gave other functionaries feedback on outcomes of cases. This has given rise to a situation where departments addressing GBV are constantly at logger heads with the ministry responsible for women and children or civil society organizations, the blame game comprising a major feature of the institutional relationship.

Similarly, the study found that local government and religious officials regularly inhibit the law from taking its course. In case of rape or sexual assault they preside over hastily arranged marriages on the demand of the girl’s parents, the concern being to save the situation at hand not to comply with the law. Other than the fact that such a practice forces the girl to relive a traumatic experience, marrying the girl to the rapist, not only rewards the criminal but also attempts to legalize his crime. These marriages are short lived and often leave women and girls destitute, raising young families on their own.

The lack of an enforcement and monitoring mecha-

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21. Notable among them are organizations of people with disabilities such as UWZ, ZAPDD or ZANAB which all report incidence of abuse against their members.
abuse crimes so that they do not omit important medical-legal information crucial in proving the crime as discovered by the Medical Legal Institute in Brazil.\footnote{22}

**Prevailing Attitudes vis-à-vis the Law**

Ann Njogu suggests strongly that VAW and the violation of women’s rights, at peace time as well as during conflicts, is indicative of a crisis in masculinities. Rosemary Okello on her part attributes incidents of gender violence to gender inequalities. Public awareness and knowledge about GBV remains low in the larger Zanzibar society resulting in many cases being unreported; or summarily dismissed as petty when reported. In the Zanzibar GBV Study, more than 65\% of individual respondents did not know of any law related to GBV while about 40\% of institutional informants claimed never hearing of SOSPA.

Values, embedded in culture, religion and patriarchy very much influence the outlook of the law with regards to regulating the moral framework in the isles. For example, the Spinster and Single Parent Children Protection Act of 2005 absolves men from a moral responsibility with regards the consequences of an illicit sexual act. It only requires he maintains the child until it reaches eighteen (sections 5(1), 8 and 9). However, and perhaps borrowing from Islamic jurisprudence, the law does not expect the father to have a protracted relationship with the child, stopping the maintenance order if he marries the mother.\footnote{23}

Parents whose daughters have been defiled are mostly concerned with saving face, a preoccupation entertained by law enforcement bodies. Accordingly, the rapist may be forced to marry the girl; or the two families may come to some settlement about the unborn child. Generally, sexual Offences against minors attract lower fines compared to say those imposed on consenting adults accused of homosexuality. Sex with a minor is only discouraged if such act occurs between people who are not married since it is acceptable that pubescent girls can be married off.

A 2005 WHO Study found that 50\% of women have experienced intimate partner violence. According to the TDHS 2004 violence is an accepted part of the male-female relationship. Women can be beaten if she burns the meal, argues with her husband, leaves the home without his knowledge, neglects the children or if she refuses to have sex with him. Anne Kithaka (2008) notes the subtle discrimination in the legal framework whereby marital status and cultural relativism are being used to deny a certain section of women constituency from the communal calabash of justice.

**The Law Contrasted with Judicial Practice**

In the Zanzibar GBV Study, 31\% of informants working in institutions dealing with GBV reported not using the Penal Act in matters concerning GBV. Subsequent interviews and case reviews reveals that the prosecution and the bench in Zanzibar use their discretion more readily than the law when handling GBV crimes as demonstrated in the following case:

A 17 year old girl was raped by her mother’s lover. The magistrate issued a lower sentence because he established that prior to the rape, the girl was already sexually active albeit not with the rapist. He was doubly prejudiced when, at the time of the trial, he found she was pregnant with another man’s child. He also admits taking into consideration the fact that the rapist was known to the household. Because he could not bear sending a 27 year old man to prison for raping a promiscuous girl, he handed a sentence of 7 years!

Additionally, court officials still required corroboration to prove rape even though the legal standard is solely proof of penetration. One female magistrate interviewed justified the importance of corroboration for those who alleged sexual violence. “If there is no corroboration”, she explained, “Men will be imprisoned on vendetta”. Routinely, legal and health personnel require evidence of bruises or the use of force to prove rape even though the law recognizes the possibility of rape in instances where a party may be tricked or coerced into having carnal knowledge, such as through false representation or being drugged.
Public uproar over sexual crimes remains great but the quantity of reported cases hardly reflects the gravity the matter. Legal practitioners consulted during the research blamed the society for being unwilling to prosecute such crimes. For example, a Regional Magistrate asserted that during her time at the bench she only knew of two cases where the parents of a child who had been violated were adamant about prosecuting the accused for the crime. However, reviewed cases strongly suggest that the legal process may actually deter victims and their families from seeking redress through the courts. After suffering a traumatic experience it is not uncommon for families and survivors to wait for months, if not years before the investigation is concluded and the case for sexual assault is heard to conclusion before a competent and impartial court of law.

Since delays are common, many parents and survivors may be led to believe that it is not worth the trouble to subject themselves through another degrading process. The longer the case takes the greater the possibility of key evidence to be lost or forgotten. Unreasonable delays led one parent to complain on record over the stalling of his child’s case which remained pending because the prosecutor was on study leave. Assigning a new prosecutor would mean starting a fresh case. The parent challenged this practice as denying the wronged child justice. Cases are also dismissed on account of lacking expert witnesses e.g. health personnel not attending court sessions to give their expert opinion or poor prosecution.

Concerns of corruption were universally voiced more so in so far as obstructing the legal process against dealing appropriately with the perpetrator of violence. Local attitudes are partly to blame for the state of affairs since most prefer to deal with “whom they know” to either bend or expedite the legal or judicial process, inviting corrupt elements to take advantage of a population that is largely illiterate in legal matters. Survivors and victims of violence who are unable ‘to buy’ their justice are routinely compromised by law enforcement officials keen to maximize profits from the misfortunes of others. Ethical considerations have little bearing on their professions.

In practice, no case of sexual assault is entertained absent a Police Form Three (PF3). The requirement to present a PF3 in all GBV cases is problematic and more so when it involves a sexual crime. Foremost, in a human resource strained health sector their admissibility requirement e.g. to be filled by a designated medical officer, is hard to realize. For instance, it is hard to find the caliber of medical officer empowered to fill the form in most peripheral public health facilities. Also, the actual form is unsatisfactory for recording sexual crimes in detail. The size of the form, roughly one third of an A4 paper, does not motivate health officials to include additional information or diagrams which may assist to elaborate the injury. Likewise, the options to fill out the form are limited to superficial injuries and not other types of injuries.

In addition, there is a problem with the instructions issued to establish whether a crime has taken place or not. For example, during the GBV Study health officials reported being asked to establish whether the girl was a virgin and not if she has been raped while police essentially, this form is filled in cases of injury from ‘accidents’ necessitating treatment.

24. Interview with Hon. Salma Maghimbi.
25. Letter written by Juma M. Abdulla with reference PHQ/Z/574/67 written on 3 November 2003 to the Principal Secretary Ministry of Health
26. see for example case of R vs. Mzee Amiri Kajele where a parent complained about why an accused who should be in court was roaming freely in the street.
27. Essentially, this form is filled in cases of injury from ‘accidents’ necessitating treatment.
officers reported being asked by parents to establish if the girl is pregnant not to investigate a rape. Purportedly, the rape allegation comes up only if the young girl is pregnant and the parents want to save face by threatening the impregnator to marry her lest he is slapped with a rape charge.

Furthermore, SOSPA provisions are defeated by the presence of laws like the Spinster and Single Parent Children Protection Act 2005 which is loaded with moral connotations about acceptable sexual behaviour and seeks to deal with the consequences of ‘illicit sexual intercourse’ i.e. extra marital sex and having children out of wedlock. In most cases it is the woman who is punished for what is understood to be sexual indiscretions while formal and informal institutions collude to ease the burden on males.

Devising Responses Guided by Experience

Maoulidi and Mallya (2007) and Mlanga (2007) argue that GBV should be approached in a multi-sectoral and integrated way. The substantive law taken alone cannot facilitate a successful prosecution of sexual crimes under the prevailing judicial system. This review also underscores the necessity of support mechanism for victims and survivors of GBV. In England, DV advisors act as liaison between the victim and various statutory agencies. This will minimize the likelihood of cases being dropped prematurely. It will also reinforce a sense of support for victims and survivors of GBV. The establishment of specialist DV courts across the country also helps in expediting GBV trials.

The court requires expert opinion to help secure a conviction, but such opinion is limited to the opinions of civil servants who are ill advised and trained in the law. Generally, the courts have been less willing to consider ongoing research on GBV as well as opinions from advocacy organizations in both the isles as well as the Mainland. Perhaps the admissibility of video recordings, photographs and statements of GBV survivors can strengthen evidence tendered to the court rather than relying solely on expert witnesses.

Moreover, the judicial system in Zanzibar needs to remain abreast of legal development and scholarship on GBV. For instance, numerous researchers have pointed out the involvement of people close to the family, including blood relatives in cases of child sexual abuse (Rumashi and Banda, 2003). Similarly, the Zanzibar GBV study established that adolescent girls were disproportionately victimized in cases of sexual violence. A similar finding was made earlier in the United Nations Study on Violence against Children and by the Horizon Study where among 21 women who reported being sexually abused before the age of twelve, eight were abuse by a family members, five were abused by a neighbour, three were abused by a family friend, two by a male worker in the house and one by a male friend. Only two respondents were assaulted by a stranger. Therefore the view that rape and sexual assault is perpetrated by people alien to the victim or family is untenable.

Overwhelmingly, GBV advocacy and services are spearheaded by CSO. But rather than going at it alone or working in opposition to the government, Wamai emphasizes strengthening CSO relationships with provincial organizations in enforcement efforts. Maendeleo ya Wanawake in Kenya, for instance, works with local police and chiefs to do GBV case follow up. In Tanzania, CSOs like Sahiba-Sisters Foundation are implementing community responses in close collaboration with newly established women police units, community police and legal outfits.

Capacity building in critical skills to manage GBV is thus an important aspect of GBV enforcement mechanism. GBV training should be an integral part of the formation of law enforcement bodies as well as local government officials. Training should consider both the substantive as well as the procedural aspects and must be supplemented by relevant work tools such as the GBV Reference Manual a joint initiative between the AG’s Office in Kenya and WiLDAF. The manual expounds the law, sets standards and recommends best practices to various levels of providers e.g. medical practitioners, activists and investigators.

In addition to international human rights instruments, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and the SADC Declaration on Gender and Development among others, require African nations to recognize full gender equality. Also, they require nations to provide the minimum standard in identifying and mapping GBV prevalence. Further, it calls for the pe-
periodic assessment of the level of institutional response to address GBV incidences.

Monitoring GBV prevalence, as well as legal and judicial practice, is thus critical to giving existing GBV laws life. The SADC Gender and Development Protocol calls for targets and benchmarks to reduce gender violence in the region. Pamela Mhlanga’s article is informative in so far as appreciating the selective application of the SADC Gender and Development Declaration in respect to enforcing the law relating to marital rape. She notes that only 9 sub-Saharan African countries, including Tanzania, recognize marital rape.

Equally, there is an urgent need to investigate available mechanism to respond to GBV incidents at different levels. Certainly, information about the status quo is critical to inform future GBV advocacy strategies and institutional responses. A welcome development is the incorporation of VAW statistics in the TDHS since 2004. The AU is considering initiating a VAW fund to address the problem of enforcement of GBV laws. An equally commendable development in the region is the Waki Commission Report which isolates sexual and GBV for special attention following the post election violence in Kenya.

Ann Njogu asserts that political will is required to profile sexual and gender based violence at par with other serious crimes. Tanzania has already developed a GBV Policy. Kenya is presently considering a national policy framework to guide in the implementation and enforcement of SOA in compliance with the law. Meanwhile there must be efforts to strengthen the prosecution of GBV crimes. England, for example, has instituted specialist Domestic Violence Courts while Turkey makes pathology services in criminal cases available in the court house.

Kithika calls for a paradigm shift in service delivery system, seeking to make them consumer friendly and sensitive. Close monitoring of GBV cases by CSOs cannot be under emphasized. Media Women’s Association in four Eastern African countries recently launched a Media Code on Violence. While the code mainly targets the reporting of case involving child sexual abuse, the idea of a code can also be popularized to other professionals to underscore the ethical dimensions of GBV advocacy. In sum, there is an urgent need for an oversight body to police the administration of justice, especially in GBV cases.

Conclusion

In many respects the legal framework in Zanzibar has made great strides in redefining gender based violence and crimes of a sexual nature. SOSPA attests to the influence of global advocacy efforts in recognizing at locals contexts explicit crimes against women outlined in CEDAW and furthered at key conferences on women including Vienna Conference on Human Rights, ICPD and Beijing. The HIV/AIDS pandemic and the particular risk posed to victims of sexual crimes also influenced strong and deliberate measures to be taken against sexual offenders.

Existing laws relating to GBV contain some strong provisions but lack an enforcement mechanism to oblige institutional compliance as envisaged under various international, regional and national instruments. Significantly, the legal framework remains ineffective because it is toothless for lack of enforceability. Likewise, women’s rights continue to be compromised because they are analyzed within a religious context instead of being linked to the legal and political framework which demands de facto and de jure gender equality.

The lesson from the GBV study in Zanzibar for future reforms suggests that law reform initiatives must simultaneously emphasize substantive and procedural aspects of the law. Also, it suggests a strong need to periodically monitor and review judicial practices in so far as their compliance to specified legal standards. Certainly, an effective law rests upon a constant critique of judicial practice against people actual experiences in the legal process. Also it needs to take cognizance of emerging knowledge, and practice in the field. It is clear that the courts in Zanzibar confine themselves to the raw form of the law and rarely, if at all, seek the benefit of studies in the field of GBV when presiding over GBV cases. This denies them the opportunity to elucidate and develop the law consonant with the peculiarities of the Zanzibar legal context.

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10. R vs. Shehe Juma Ame, Criminal Case No.119 of 2001

ACRONMYS

AIDS Acquired Immune Deficiency Syndrome
AU African Union
CSO Civil Society Organization
DAW Division on the Advancement of Women
DV Domestic Violence
e.g. for example
i.e. that is
GBV Gender Based Violence
HIV Human Immunodeficiency Virus
HRW Human Rights Watch
MLYWCD Ministry of Labour, Youth, Women and Children Development
MoHSW Ministry of Health and Social Welfare
PF3 Police Form 3
R Republic
SADC Southern Africa Development Cooperation
SOA Sexual Offences Act
SOSPA Sexual Offences Act
STDs Sexually Transmitted Diseases
STIs Sexually Transmitted Infections
§ Section
§§ Sections
TDHS Tanzania Demographic and Health Survey
Tshs. Tanzanian Shilling
UN United Nations
USD United States Dollars
UWZ Umoja wa Walemavu Zanzibar
VAW Violence Against Women
vs. versus
WiLDAF Women in Law and Development
WHO World Health Organization
ZAPDD Zanzibar Association of people with developmental disabilities
ZANAB Zanzibar National Association for the Blind.