



Legal and Human Rights Centre

Tanzania Human Rights Report 2008:
« Progress through Human Rights »

Compilation of extracts on women's rights

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The Situation of Women's Rights in Tanzania

Table of Contents

Introduction.....	3
1. Laws discriminating against Women	4
2. Political rights - women's participation in government	6
3. Female Genital Mutilation	7
4. Gender-based Violence.....	9
5. Women's Property Rights	13

The Situation of Women's Rights in Tanzania

Introduction

The core international instrument on women's rights is the Convention on the Elimination of all Forms of Discrimination against Women, 1979.¹ which requires governments to ensure that women are not discriminated against in any sphere of life, whether public or private.² The prohibition against discrimination on the basis of gender is contained in a number of other international and regional instruments to which Tanzania is a signatory, such as the International Covenant on Civil and Political Rights, 1966, the African Charter on Human and Peoples' Rights, 1981 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000.³ In 2008, SADC also adopted the Gender and Development Protocol.⁴

The Constitution, 1977 explicitly prohibits discrimination on the basis of gender.⁵ Despite the various international, regional and national legal instruments guaranteeing women's rights, when a survey respondent from the Songea district was asked about the situation of women in Tanzania, she said:

“Unyanyasaji wa wanawake unafanywa kwa njia nyingi. Kwa mfano, kuzalishwa watoto wengi; kufanyishwa kazi kuliko wanaume; kubakwa; kupigwa; kudharauliwa; na kutopewa elimu sawia na wanaume” [“There are various ways in which women are mistreated. For instance, they are forced to have many children; do harder work than men; raped; assaulted; ignored; and denied an equal opportunity to be educated”.]⁶

As evident from the quote set out above, women still experience discrimination in Tanzania and they are vulnerable to human rights violations. Some of this discrimination stems from cultural practices and societal attitudes that are gender-based, while some discrimination is as a result of laws that are discriminatory either in themselves or in their effect. This section will examine some of the key areas in which women's human rights are violated, or in which there is discrimination against women.

1 Adopted December 18, 1979, entered into force September 3, 1981, ratified by Tanzania 20 August 1985) 1249 UNTS 13.

2 For instance, in the Convention on the Elimination of all Forms of Discrimination against Women, 1979, *ibid.*, discrimination is prohibited in areas such as: in political or public life as per Art. 7; in the workplace as per Art. 11; and, in matters relating to marriage and family relations as per Art. 16.

3 Art. 4 of the International Covenant on Civil and Political Rights, 1966; Art. 18 of the African Charter on Human and Peoples' Rights, 1981; Art. 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000.

4 K. Madibana 'SADC leaders will not criminalize marital rape' Sunday Standard (Gaborone 31 August 2008) <<http://www.sundaystandard.info>> accessed 10 December 2008.

5 Art. 13 of the Constitution of Tanzania, 1977. According to Art. 13(5) « The term “discriminate” means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantages outside the specified conditions or the prescribed necessary qualifications... »

6 Response to LHRC opinion survey by interviewee in Songea district (Tanzania January to November 2008).

1. Laws discriminating against Women

Contrary to Article 13 of the Constitution of Tanzania, 1977, there are a number of Tanzanian laws that are discriminatory either in themselves or in their effect. There is the need to amend these laws in order to protect women's rights and to remove provisions that are discriminatory. This section considers some of the laws that need to be revised.

In mainland Tanzania, there are two acts that govern marriage and family matters, the Law of Marriage Act, 1971 and the Affiliation Act, 1949.⁷ Certain provisions of these Acts are discriminatory either in themselves or in their effect. Marriage in Tanzania is governed by the Law of Marriage Act and religious customary law. The Law of Marriage Act provides that a marriage can be monogamous or polygamous where in a polygamous union, a man may be married to more than one woman.⁸ However, a woman is prohibited from being married to more than one man at a time.⁹ While polygamy is a part of the culture of Tanzania, it is a practice that supports the societal perception that women are subservient and that a man entitled to the benefit of more than one wife. The LHRC is in agreement with the recommendation of the UN Committee on the Elimination of all Forms of Discrimination against Women that polygamy should be eliminated in Tanzania.¹⁰ The other issue arising in relation to marriage is the difference in the legal age of marriage for men and women. The Law of Marriage Act provides that a man cannot be married before attaining the age of 18, while a woman cannot be married before the age of 15 years.¹¹ A reading of the Penal Code suggests that a woman can actually be married before they reach the age of 15 years. The Penal Code states:

« ..Shall not render it an offence for any person of African or Asiatic descent to marry or to permit the marriage of a woman under the age fifteen years in accordance with the custom of the tribe or the religion where it is not intended that the marriage be consummated before the woman attains the age of fifteen years...¹² »

The provisions in the Law of Marriage Act and the Penal Code are discriminatory, as they make a clear distinction between men and women in terms of their age of marriage. Furthermore, they are contrary to the African Charter on the Rights and Welfare of the Child, 1990, which provides that:

« [c]hild marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years...¹³ »

In Ilkereiyan Village in the Kisongo area in the Dodoma region, Logoilek Shiwawa allegedly planned to marry his 11-year old daughter, Felister Logoilek, to a 50-year old suitor who had paid a dowry for her.¹⁴

Early marriages can have a negative impact on the long term prospects of girls, as they often do not complete their education, it is likely that these girls will become mothers at a young age, and it supports the perpetuation of gender power imbalances that already exist in society.

7 Cap. 278, R.E. 2002.

8 Ss. 9 and 10 of the Law of Marriage Act, 1971.

9 S. 15 of the Law of Marriage Act, 1971.

10 UN Committee for the Elimination of All Forms of Discrimination against Women, at p. 14.

11 S. 13 of the Law of Marriage Act, 1971.

12 S. 138 of the Penal Code, Cap. 16. This provision of the Penal Code pertains to the defilement of a woman by her husband.

13 Art. 21(2) of the African Charter on the Rights and Welfare of the Child, 1990.

14 V. Marc 'School girl flees home to beat forced marriage' *The African* (Tanzania) 25 January 2008.

The Law of Marriage Act also addresses the rights and obligations of parties upon the dissolution of a marriage. One of the areas that it addresses is spousal support. A woman is entitled to spousal support when there are special circumstances.¹⁵ What constitutes “special circumstances” is not addressed by the Law of Marriage Act or the case law. In the event that a court does order spousal support, the quantum of this support is determined on a needs and means basis that takes into account the degree of responsibility of each party for the breakdown of the marriage, and the customs of the community to which the parties belong.¹⁶ The manner in which the quantum of spousal support is determined does not take into account the often greater negative impact of a marriage on a woman. For instance, a woman may be prevented from pursuing her education or certain economic opportunities because of her obligations to her family or traditional conceptions about a woman’s role in society. In addition, it is inappropriate for the court to take into account the customs of a community when ordering spousal support, particularly as these customs are often patriarchal and do not favour women’s rights.

Child support for a child born in wedlock is addressed by the Law of Marriage Act. Under the Law of Marriage Act, a man has the duty to maintain his children who are under the age of 18 years.¹⁷ The quantum of the maintenance is the amount that is reasonable given the man’s means and station in life to provide accommodation, clothing, food and education to the child.¹⁸ In contrast, child support for a child born out of wedlock is considered by the Affiliation Act, 1949.¹⁹ The Affiliation Act provides for the payment of Tsh 100 per month for the maintenance and education of the child.²⁰ The amount set out in the Affiliation Act is wholly inadequate to support a child. As a result, the economic burden of raising the child is borne almost entirely by the mother of the child, effectively punishing her for having a child out of wedlock. A man may apply to court to have a child support order made under the Affiliation Act vacated, if a woman remarries.²¹ This provision allows a man to completely abdicate any responsibility to the child. The differences in the child support provisions of the Law of Marriage Act and the Affiliation Act indicates a clear discrimination against children born out of wedlock and it is inappropriate, as the child’s opportunities in life may be handicapped due to insufficient monetary resources. The provisions regarding child support that are contained in these two acts should be harmonised. In the alternative, if the amount of child support continues to be set in the Affiliation Act, then this amount should be reviewed and the Act amended on a regular basis. This process would ensure that the amount of child support would keep pace with changes in the cost of living and inflation.

In 2008, the Minister for Community Development, Gender and Children, Margaret Sitta made it clear that laws that undermine the rights of women and children should be wiped out as a matter of priority.²² MPs were also called upon to play a role in amending outdated laws that do not reflect the needs and demands of contemporary society, such as the Law of Marriage Act and the Affiliation Act.²³ However, there have been plans to amend various discriminatory laws, such as the two laws discussed above, for approximately the past 15 years with no result.²⁴

15 S. 115 of the Law of Marriage Act, 1971.

16 S. 115 of the Law of Marriage Act, 1971.

17 S. 129 of the Law of Marriage Act, 1971.

18 S. 129 of the Law of Marriage Act, 1971.

19 S. 5 of the Affiliation Act, 1949.

20 S. 5 of the Affiliation Act, 1949.

21 S. 6 of the Affiliation Act, 1949.

22 A. Robi and M. Gwera ‘Govt ready to revise laws oppressive to women – JK’ Sunday News (Tanzania) 25 May 2008.

23 D. Stephen ‘Amend bad laws, MP told’ Daily News (Tanzania) 23 January 2008.

24 Human Rights Report of 2007, *supra*, at p. 60.

The LHRC implores the government to amend these laws so that they do not discriminate against women and to make these amendments in a timely fashion.

2. Political rights - women's participation in government

In 2005, the 14th amendment of the Constitution of Tanzania, 1977 increased the number of seats reserved for female MPs from 15 percent to 30 percent.²⁵ These reserved seats are called special seats. In order to fill the special seats, each political party nominates and ranks female candidates from their party for the special seats.²⁶ The number of female candidates drawn from each political party is proportionate to their political party's representation in parliament.²⁷ These constitutional provisions are in accordance with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000, which mandates that states should take positive action to promote women's participation in governance.²⁸

After the 2005 general elections, of the 321 Parliamentarians, 98 were women (17 were elected by their constituencies, 75 hold special seats, four were nominated by the President and two were from Zanzibar).²⁹ Differently stated, approximately 30 percent of MPs were women.³⁰ The Tanzanian government's aim is to increase the number of female MPs to 50 percent by 2010.³¹ The 50 percent target is in line with the Southern African Development Community's (SADC's) Protocol on Gender and Development, which states that:

« [m]ember states shall ensure that by 2015, 50 percent of decision-making positions in the public and private sectors, the cabinet, the parliament, judiciary, all tribunals and commissions, including human rights bodies, civil society, traditional structures, trade unions, political parties and the media are held by women, and shall monitor their quotas to ensure that representation. »³²

While Tanzania has made positive progress in its number of female MPs, it continues to experience difficulties in increasing the number of women in cabinet and in senior decision making positions in government. As of July 2008, six of the 27 ministers were women; eight of the 30 deputy ministers were women; eight of the 27 permanent secretaries were women; three of the 15 deputy permanent secretaries were women; and 22 of the 77 judges in Tanzania were women.³³ The majority of female government employees hold positions like receptionists and personal assistants, which typically

25 Art. 66(1) of the ; Constitution of Tanzania, 1977. Also see Written statement by Hon. Margareth Simwanza Sitta, Minister for Community Development, Gender and Children, United Republic of Tanzania to the Committee on Elimination of Discrimination against Women (New York 11 July 2008) <<http://www2.ohchr.org>> accessed 6 November 2008.

26 Art. 78 of the Constitution of Tanzania, 1977.

27 Art. 78 of the Constitution of Tanzania, 1977.

28 Art. 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000 (adopted 13 September 2000, entered into force 25 November 2005, signed by Tanzania 5 November 2003) OAU CAB/LEG/66.6.

29 Written statement by Hon. Margareth Simwanza Sitta, *supra*.

30 Mukunza, *supra*.

31 Mukunza, *supra*.

32 Art. 5 of the Protocol on Gender and Development of SADC (Johannesburg 17 August 2008) SADC/M/2007/GAD/2.

33 Committee on Elimination of Discrimination against Women 'Impeding Tanzanian efforts to implement Women's Convention were male domination, physical violence, emotional abuse, women's antidiscrimination committee told' (Press Release New York 11 July 2008) General Assembly WOM?1695 <<http://www.un.org/News/Press/docs/2008/wom1695.doc.htm>> accessed 6 November 2008.

have low salaries and give women few opportunities of advancement. Despite the relatively high percentage of women in the parliament, there is concern about whether women are effectively participating in governance. It is noted that the majority of women hold these positions due to affirmative action policies, rather than through direct competition in various constituencies.³⁴ The affirmative action appointment of women into these positions may undermine the legitimacy and credibility of their input into governmental decisions. Whether these women feel empowered as MPs and contribute to parliamentary proceedings is unknown. It is important to study the role of female MPs, as there is a need not only for women to be appointed to these positions, but also for these women to actively and meaningfully participate in parliamentary proceedings. One of the reasons that women in parliament primarily hold special seats, rather than being elected by a constituency, is because few women are nominated as candidates by their political parties.³⁵

The LHRC encourages political parties to support and nominate female candidates. Furthermore, the LHRC encourages political parties to support women in attaining leadership roles within their political parties. At the moment, all the leaders of Tanzania's political parties are men.³⁶

In addition, there are social and cultural barriers that hinder women from participating in governance. **The LHRC recommends that the government engage in a sensitization campaign to help break down these barriers.**

3. Female Genital Mutilation

Female genital mutilation (FGM) is defined as all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons.³⁷ FGM is practiced in Tanzania and, in particular, it is practiced in the regions of Arusha, Dodoma, Kilimanjaro, Kigoma, Manyara, Mara and Morogoro.³⁸ Between 1995 and 2005, the percentage of women and girls who underwent FGM in Tanzania declined from 18 percent to 15 percent.³⁹ However, as communities are reluctant to discuss FGM, it is difficult to provide accurate statistics on the number of women and girls who currently undergo FGM.⁴⁰ What is certain is that FGM continues to be practiced in Tanzania. From a legislative perspective, the practice of FGM is prohibited at the regional level by the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000, which calls for the elimination of practices that are harmful to women, including FGM.⁴¹ FGM was also considered by the UN General Assembly in the Declaration on the Elimination of Violence against Women, which exhorts states to eliminate gender-based violence (GBV), including FGM.⁴² This Declaration also affirms the principles that although a practice that results in GBV may be customary, traditional or based on religion, this does not justify the occurrence of this practice.⁴³ In an attempt to address FGM in

34 L. Rashid 'Towards equal representation in parliament' *The Guardian* (Tanzania) 3 June 2008.

35 *Ibid.*

36 *Ibid.*

37 LHRC, 'Female Genital Mutilation: A Human Rights Abuse veiled in customs and traditions, A Report on the research into the Practice of FGM in Tanzania' (Report Tanzania August 1999), at p. 11.

38 Human Rights Report of 2007, *supra*, at p. 63.

39 N. Samwel 'Gender minister says FGM cases on the decline' *Daily News* (Tanzania) 17 June 2008.

40 Human Rights Report of 2007, *supra*, at p. 4.

41 Art. 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2000.

42 Arts. 1, 2 and 4 of the Declaration on the Elimination of Violence against Women of 1993. UNGA Res 48/104, UN Doc A/48/49.

43 *Ibid.* at Art. 4

Tanzania, the government adopted a National Plan of Action to Combat FGM (2001- 2015) and it enacted the Sexual Offences Special Provisions Act (SOSPA) in 1998.⁴⁴ It criminalizes the practice of FGM by amending the Penal Code, 1930 including the following provision:

« Any person who, having the custody, charge or care of any person under eighteen years of age...causes female genital mutilation or carries or causes to be carried out female genital mutilation...commits the offence of cruelty to children. »⁴⁵

This above-noted Penal Code, 1930 provision has been criticised because it does not apply to persons over the age of 18 years, who may undergo FGM unwillingly or due to family or societal pressure. Furthermore, this provision does not contain a minimum sentence, which has resulted in courts exercising their discretion to impose marginal sentences on offenders.⁴⁶ **We recommend that this provision of the Penal Code be amended to address these two criticisms.**

The enforcement of this provision has been difficult due to insufficient knowledge of the law, inadequate police resources, the victim's reluctance to testify against family and community members, fear of reprisals from FGM practitioners, corruption and poor police investigation.⁴⁷ For instance, it has been reported that the police, ward executive officers and village executive officers accept bribes to not pursue FGM cases.⁴⁸

In addition, authorities may choose not to pursue an FGM case. For instance, it was reported that police in the Babati District, Manyara Region did not follow-up on a report that a 12 year-old girl had been circumcised, or take any actions against the local circumcisor.⁴⁹ In order to reduce FGM, it is important for police to be proactive in enforcing the Penal Code and to react to information regarding instances of FGM. The police's failure to enforce the law will encourage people to continue with this practice and create a culture of impunity. However, fear of being prosecuted under the Penal Code has caused a shift in the manner in which FGM is practiced. In some areas, such as the Singida and Dodoma regions, people have started circumcising infants in an effort to avoid detection.⁵⁰ Infants are being circumcised at birth by midwives who "poke their fingers, nails and incisive objects into infants' clitoris as soon as they are born".⁵¹ The circumcision of infants can lead to psychological and health problems, including damage to the bladder, infections and even death, if there is excessive bleeding. In response to this trend, health workers in the Singida Region have embarked on a campaign to check whether infants have been circumcised when infants are presented at clinics for routine check-ups.⁵² Parents of circumcised infants are subject to prosecution.⁵³

The other trend that emerged in 2008 in the context of FGM was the voluntary circumcision of

44 It has now been incorporated under Part XV and XVI of the Penal Code, Cap. 16 (1930).

45 S. 169A of the Penal Code, Ca. 16.

46 A. Kaniki 'Children protection against FGM' Sunday Citizen (Tanzania) 25 May 2008.

47 Immigration and Refugee Board of Canada 'Tanzania: The practice of female genital mutilation (FGM); state protection available to victims' (Report Ottawa 14 August 2008) <<http://www.unhcr.org>> accessed 18 November 2008.

48 AFNET 'Minutes of meeting of Anti-FGM Coalition' (Meeting minutes Dodoma, Tanzania 6 February 2008).

49 E. Masanja 'Activists accuse govt of apathy in FGM fight' The Citizen (Tanzania) 18 May 2008.

50 R. Mwalongo 'Coalition says infant genital mutilation worst human rights violation' The Guardian (Tanzania) 7 February 2008

51 Z. Shame 'New form of female genital mutilation creeping in – NGO' The Guardian (Tanzania) 27 November 2008. This statement was made by Severa Massawa, a member of the executive committee of the Network Against Female Genital Mutilation.

52 'Health workers now diagnose genitally mutilated infants' The Guardian (Tanzania) 15 December 2008.

53 Ibid.

elderly women. Elderly women are willingly undergoing circumcision so that they can sell the part of their genitalia that was circumcised off to miners.⁵⁴ The miners believe that when these parts of the genitalia are used in witchcraft, it will increase their success in obtaining minerals.⁵⁵ While the FGM of elderly women is voluntary, it may still negatively affect the health of these women. It also points to disturbing beliefs in witchcraft. In the past six years, a number of women who are ngaribas or circumcisors have voluntarily stopped the practice of FGM. In the period 2002 to 2007, 380 circumcisors voluntarily gave up their practice of circumcising girls and women. Most of these practitioners originated from the regions of Arusha, Dodoma, Manyara and Mara.⁵⁶ This trend continued in 2008. For instance, in the Monduli district, Arusha region, a group of 20 circumcisors agreed to stop practicing FGM.⁵⁷ These circumcisors appealed to the government to assist them to find an alternative source of income, as these women were practicing FGM as a means of supporting themselves. **The LHRC encourages the government to fund a program aimed at creating jobs for elderly women so that these women have a means of generating income that is unrelated to FGM.**

There is a need for the government to educate people about the laws regarding FGM and, in particular, the criminalization of the practice of FGM and the negative effects that FGM has on a person's health. Furthermore, the government needs to sensitize law enforcement officers and judicial authorities about FGM and the importance of enforcing the applicable laws. It is imperative that law enforcement officers and judicial authorities strictly enforce the FGM provisions of the Penal Code.

4. Gender-based Violence

The UN Declaration on the Elimination of Violence against Women, 1993 offered the first official definition of GBV stating that it was any violence that would result or likely result in physical, sexual or psychological harm or suffering to women, whether in public or in private.⁵⁸ GBV includes acts such as spousal battery; sexual abuse; rape, including marital rape; FGM; sexual harassment at work; and, trafficking in women.⁵⁹ In Tanzania, GBV continues to be a widespread problem, as shown by the statistic that 6,531 cases of violence against women were reported in Tanzania in 2007.⁶⁰ Chapter 5.1.2. of this report addresses the issue of FGM. This part of the report will focus on the issues of spousal and non-spousal battery, sexual violence and trafficking in women.

Spousal and non-spousal battery

Spousal and non-spousal battery is widespread in Tanzania. In November 2007, it was reported that 50 percent of women in Tanzania were beaten on a daily basis by their partners.⁶¹ For instance, Scholastica Ramadhani reported being beaten by her husband on a regular basis before he threw her

54 R. Mwalongo 'Women undergoing FGM to sell parts to miners- study' The Guardian (Tanzania) 8 February 2008.

55 Ibid.

56 'Over 300 FGM practitioners down tools, says AFNET' The African (Tanzania) 27 January 2008.

57 B. Mwankina '20 female circumcisors down tools' This Day (Tanzania) 26 March 2008.

58 UN Population Fund 'State of the World Population 2005' (Report New York 2005) <<http://www.unfpa.org>> accessed 1 December 2008.

59 Ibid.

60 H. Lazaro 'Violence against Women on the rise' Arusha Times (Tanzania) 29 November 2008.

61 Immigration and Refugee Board of Canada 'Tanzania: Situation of women victims of domestic violence, including legislation and the availability of protection and support services' (Report Ottawa 15 July 2008) <<http://www.unhcr.org>> accessed 21 October 2008

out of the house.⁶² In addition, 25 percent of Tanzanian women interviewed in a 2006 study reported being subject to non-spousal battery.⁶³ A number of incidents of non-spousal battery were also reported in the media. For instance, a 35-year old woman died at the Bunda District Hospital from injuries she sustained after being beaten by a male relative,⁶⁴ and a 15-year old girl had her ears cut off by her father-in-law after there was a dispute between her family and her in-laws.⁶⁵ Spousal and non-spousal battery can result in injuries that range from mild to severe. A 2006 WHO study found that 30 percent of victims of spousal battery ended up with serious injuries due to severe beatings.⁶⁶ Battery is not limited to beatings, rather it refers to contact between two persons that causes one person bodily harm. Kulwa Samwel is a good example of spousal battery that results in bodily harm. Ms. Samwel's partner seriously injured her by pouring acid over her face and body.⁶⁷

One of the reasons for the high incidence of spousal battery is the existence of customs and traditional practices that condone the harassment and abuse of women.⁶⁸ Furthermore, spousal and non-spousal battery has become normalized in Tanzania. Research conducted in 2006 indicated that 60 percent of women believed that wife beating was acceptable.⁶⁹ This normalization and acceptance of spousal battery is a barrier to effectively dealing with spousal battery. Other barriers include the reluctance of women to report spousal battery due to cultural, social and family pressures. For instance, women are silent about spousal battery because they want to protect their children and their marriage, and they are threatened with further violence if they report the spousal battery.⁷⁰ Furthermore, women are concerned that their spouses will be jailed if they report spousal battery.⁷¹ In 2001, the Tanzanian government adopted a National Plan of Action to Combat Violence Against Women and Children (2001 – 2015). However, the effective implementation of this plan has been hindered by inadequate funding and the lack of a comprehensive legal aid system that can be accessed by women.⁷²

In May 2008, the government took further steps to address spousal and non-spousal battery by endorsing the United Nation's Development Fund for Women's "Say No to Violence" campaign.⁷³ The government also encouraged women to speak out about spousal battery and to be proactive in protecting their rights.⁷⁴ In addressing GBV, the government announced its intention to amend laws that perpetuate GBV.⁷⁵ The LHRC would welcome such amendments and encourages the government to make these amendments as quickly as possible as they are long overdue. The LHRC is concerned that any potential amendments of laws that perpetuate GBV will be treated in the same manner as the amendments to the Law of Marriage Act. The government has been working on

62 M. Mwanatongoni 'Women silent on domestic violence' *The Guardian on Sunday* (Tanzania) 8 June 2008.

63 'Tanzania: Domestic Violence a serious concern' IRIN (20 April 2006), online: <<http://www.irinnews.org>> accessed 1 December 2008.

64 M. Jacob 'Woman dies in land row' *Daily News* (Tanzania) 14 February 2008

65 A. Robi 'Discrimination against women persists despite efforts against it' *Daily News* (Tanzania) 11 June 2008.

66 WHO 2006 *Supra*.

67 LHRC, Report about Kulwa Samwel (Report Tanzania 8 May 2008).

68 A. Robi 'Discrimination against women persists despite efforts against it' *Daily News* (Tanzania) 11 June 2008.

69 Immigration and Refugee Board of Canada, *supra*. In contrast, 42 percent of men indicated that wife beating was acceptable.

70 P. Mwangi 'TAWLA says women must speak out' *The Guardian on Sunday* (Tanzania) 8 June 2008.

71 *Ibid*.

72 UN Committee for the Elimination of All Forms of Discrimination against Women, *supra*, at p. 6.

73 'Violence against women is primitive and illegal' *Sunday Citizen* (Tanzania) 25 May 2008

74 A. Robi and M. Gwera 'Govt ready to revise laws oppressive to women – JK' *Sunday News* (Tanzania) 25 May 2008.

75 L. Kato 'JK for new laws to check violence against women' *The Citizen* (Tanzania) 25 May 2008.

amendments to the Law of Marriage Act for the past 15 years.⁷⁶

In an effort to address GBV, the LHRC recommends that the Penal Code be amended to include a specific provision regarding spousal battery. Alternatively, the Law of Marriage Act may be amended to address spousal battery. At present, the Law of Marriage Act provides that “no person has any right to inflict corporal punishment on his or her spouse”.⁷⁷ However, the Act does not provide a definition of what constitutes “corporal punishment”. This creates uncertainty about what actions are prohibited by the Law of Marriage Act. It is the LHRC’s position that the Act should be amended to clearly state that any verbal or physical abuse by one spouse of another spouse is prohibited.

Sexual violence

Sexual violence in the forms of sexual abuse and rape are frequently reported in Tanzania. For instance, in the period January to October 2008, 196 cases of rape were reported to the police in the Arusha Region alone.⁷⁸ This number does not accurately reflect the incidence of rape in the region, as most rape cases go unreported and this is only one of 26 regions in Tanzania. The high incidence of sexual violence coupled with the inadequate sexual offence provisions of the Penal Code make girls and women vulnerable to sexual violence against which they have limited judicial recourse. There are a number of sexual offence provisions in the Penal Code that do not adequately protect women from sexual violence. One such provision is the provision relating to rape. The rape provision only applies to non-consensual sexual intercourse between a man and a girl or woman, where the girl or woman is not the man’s spouse or the man’s separated spouse.⁷⁹ This provision does not apply to marital rape. The occurrence of marital rape was alluded to by a survey respondent from Bariadi district, Shinyanga region, who said:

“... wanawake pia tunalazimishwa tendo la ndoa na wanaume zetu, hata kama hatujisikii vizuri.”
[“...women, we are also forced to have sexual intercourse with our husbands, even if we do not feel well”.]⁸⁰

The explicit exclusion of marital rape from the rape provision of the Penal Code is unacceptable. The failure to include marital rape as offence in the Penal Code means that women are denied the protection of the law for sexual violence that occurs within a marriage. Furthermore, the lack of such an offence dis-empowers married women and enhances the power imbalance that exists between men and women, as a married man can fulfill his sexual needs with or without his wife’s consent. **The LHRC recommends that the government engages in a sensitisation campaign on the issue of marital rape and the government should start considering what, if any, legislative response it should have to the issue of marital rape.**

Human Trafficking

In May 2006, Tanzania ratified the UN Convention against Transnational Organised Crime and, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women

76 Human Rights Report of 2007, supra, at p. 60.

77 S. 66 of the Law of Marriage Act, 1971.

78 H. Lazaro ‘Violence against Women on the rise’ Arusha Times (Tanzania) 29 November 2008.

79 s. 130 of the Penal Code, Cap. 16.

80 Response to LHRC opinion survey by interviewee in Bariadi district, Shinyanga region (Tanzania January to November 2008).

and Children.⁸¹ The Tanzanian government incorporated this international instrument into its domestic legislation by enacting the Anti-Trafficking in Persons Act, 2008.⁸² In an effort to increase the impact of this Act, legislators have called for increased public education about trafficking and the new law, and for the new law to be translated from English into Kiswahili.⁸³ In addition, 332 law enforcement officers were provided with specialized training on human trafficking and the government created an anti-human trafficking police unit.⁸⁴ The Anti-Trafficking in Persons Act prohibits the trafficking of persons both domestically and internationally, and sets out various penalties for offences based on the trafficking of persons. The definitions of the offences contained in the Act have been criticised as trafficking appears to be equated with sexual exploitation, pornography and prostitution.⁸⁵ Furthermore, the offences contained in the Act do not include trafficking for labour. In addition, while the trafficking of children has been criminalized in this Act, the sale of children has not been criminalized.⁸⁶ The broadening of the offences set out in Anti-Trafficking in Persons Act would allow the government to address the problem of trafficking in a more comprehensive manner.

Currently, there is no official data on the trafficking of women in Tanzania.⁸⁷ However, anecdotal evidence suggests that the trafficking of women is occurring. For instance, in March 2008, Mwajita Simba reported to the LHRC that she had been kidnapped from her home in Arusha and brought to Dar es Salaam to work as a prostitute.⁸⁸ This anecdotal evidence also suggests that children are being trafficked within Tanzania. Occurrences of child trafficking were noted by a survey respondent from Songea district who stated:

“Unakuta mtu anamchukua matoto kwa wazazi wake kwa kusema kuwa anampeleka shule kumbe anamtumia kama chombo cha kujiingizia kipato mf. Kuuza watoto wa kike kwa wanaume” [You will find the situation that someone takes a child from his/her parents, saying that s/he takes the child for schooling but to the contrary, s/he uses the child as a means of income. For example, by selling girls to men”].⁸⁹

The LHRC recommends that the government do research on trafficking in Tanzania in order to quantify the problem. This research should yield data that is segregated by age, sex and source, which would allow the Tanzanian government to develop a targeted strategy that addresses the issue of trafficking of women and children. **After the research has been completed, the government should formulate and implement a policy that addresses trafficking.**

81 UN Committee for the Elimination of All Forms of Discrimination against Women, *supra*, at p. 7; UN Convention against Transnational Organised Crime and, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, G.A. Res. 55/25 (adopted 15 November 2000, entered into force 9 September 2003, ratified by Tanzania 24 May 2006) U.N. Doc. A/45/49 (Vol. I) (2001).

82 Anti-Trafficking in Persons Act, 2008, No. 6 of 2008.

83 T. Abdallah ‘Law to combat human trafficking in offing’ Daily News (Tanzania) 7 May 2008.

84 L. Mukabana-Inzira ‘Human trafficking: A crime that should be tackled right from our homesteads’ The Guardian (Tanzania) 23 October 2008.

85 NGO group for the Convention on the Rights of the Child ‘State Party Examination of Tanzania’s First Periodic Reports on the OPSC’ (15 September – 3 October 2008) 49th Session of the Committee on the Rights of the Child <<http://www.crin.org>> accessed 3 December 2008, at p. 3.

86 *Ibid.* at p. 3.

87 Statement by Margareth Sitta, Minister for Community Development, Gender and Children of the United Republic of Tanzania to the Committee on Elimination of Discrimination against Women (New York 11 July 2008).

88 LHRC ‘Short Report on Fact Finding of Brothels’ (Report Tanzania 6 March 2008).

89 Response to LHRC opinion survey by interviewee in Songea district (Tanzania January to November 2008).

5. Women's Property Rights

Under the Constitution of Tanzania, 1977, every person in Tanzania is entitled to own property.⁹⁰ A person's right to own property is governed by the provisions of the Land Act (Supra) and the Village Land Act (Supra). Both of these Acts reversed discriminatory customary practices that negatively affected the rights of women to land and these Acts recognized the equal entitlement of men and women to own property.⁹¹ Despite these Acts, there is concern that women are unable to realise the right to own land and other property due to a lack of awareness of these Act or how to enforce their rights.⁹² Further sensitisation of women about their land rights is still necessary. Discriminatory inheritance practices are a major barrier to female land ownership. In Tanzania, there are three systems of law that apply to inheritance:⁹³

□ Statutory law (the Indian Succession Act 1865), which applies to Christians and those of European origin. This law provides that where a deceased has children, one-third of the estate will pass to his widow and two-thirds will pass to the children. If there are no children, then the widow is entitled to half of the estate with the other half passes to the deceased's parents or blood relatives;

□ Islamic law, which applies to Muslims. Islamic law provides for widows to receive a base amount of inheritance. Specifically a widow will receive one-eighth of the deceased's property if there is issue of the marriage and one-fourth of the deceased's property if there is no issue;

□ Customary laws, which are recognized by the Local Customary Law (Declaration) Order. Under most customary law, a widow cannot inherit the house or real property of the deceased. If a widow wants to rely on statutory law, rather than customary law, she has to show that she has not lived according to customs and tradition.⁹⁴

The government has stated that it is currently reviewing discriminatory laws that prevent women from inheriting land and other types of property.⁹⁵ In the interim, discriminatory laws, such as the Local Customary Law (Declaration) Order, No. 4, remain in effect.⁹⁶ This Order denies widows the right to inherit property on the death of their husband. Furthermore, this Order only allows a widow to inherit clan land and enjoy the right to use and profit from the property, but not own the property, until she remarries, but only if there are no male relatives in the clan.⁹⁷ Overall, the Local Customary Law (Declaration) Orders give legal effect to customary inheritance laws that are gender- insensitive.

The effect of the gender bias in the Local Customary Law (Declaration) Orders has been partially

90 Art. 24 of the Constitution of Tanzania, 1977.

91 UN Committee for the Elimination of All Forms of Discrimination against Women, supra, at p. 12; S.3 of the Land Act, 1999.

92 UN Committee for the Elimination of All Forms of Discrimination against Women, supra, at p. 12.

93 These three systems of law can co-exist by virtue of the Judicature and Application of Laws Act, 1920, Cap. 358, R.E. 2002.

94 Human Rights Report of 2007, supra, at pp. 59 and 60; LHRC 'Monitors Capacity Building Training Report' (Report Tanzania 18 June 2008) 19; HelpAge International Tanzania 'NGO Thematic Shadow Report on Older Women's Rights in Tanzania submitted to the Committee on the Elimination of All Forms of Discrimination Against Women' (April 2008) <<http://www2.ohchr.org>> accessed 2 December 2008 (NGO Thematic Shadow Report), at p. 10.

95 NGO Thematic Shadow Report, *ibid.* at p. 10.

96 NGO Thematic Shadow Report, *ibid.* at p. 10.

97 NGO Thematic Shadow Report, *ibid.* at p. 10; F. Kessy et al 'Vulnerability and Property Rights of Widows and Orphans in the Era of the HIV and AIDS Pandemic: A case study of Muleba and Makete Districts, Tanzania' (UNFAO Working Paper No. 5, 2008) <<ftp://ftp.fao.org>> accessed 2 December 2008, at pp. 26 and 27.

ameliorated by the decision in *Bernardo Ephrahim v. Holario Pastory and Another*.⁹⁸ In this case, the Hon. Justice Mwalusanya found the inheritance provision in the Haya Customary Law (Declaration) (No. 4) Order, 1963 to be inconsistent with Article 13(4) of the Constitution, which bars discrimination on account of sex. The Hon. Justice Mwalusanya modified the rules of inheritance contained in this Order to accord with the principle of equality, such that men and women have equal rights to inherit and sell clan land.⁹⁹

The absence of a uniform inheritance law that applies equally to all individuals, irrespective of religion, tribe and colour has resulted in women being deprived of their right to property when their partner's die. In an effort to empower women in this regard, the Tanzania Women Lawyers Association (TAWLA) has advocated the creation of family courts to address cases involving probate and inheritance issues in an attempt to secure the rights of women and children.¹⁰⁰ It is unclear whether the government would consider establishing courts of this nature.

Children are also often negatively affected by the inconsistencies between the inheritance laws and the inability to enforce succession rights. The LHRC received a number of reports in 2008 from a child or their guardian about issues of inheritance rights, such as:

□ A 13 year-old girl wanted to receive the title to a piece of real property that she had inherited from her parents. Her uncle, who was the administrator of the estate, had assumed title to the real property;

□ The administrators of the estate of a child's mother refused to distribute money to the 13 year-old boy to pay for his school fees; and,

□ Two girls who had attained the age of majority were attempting to obtain the property from their father's estate from the administrator of the estate, their uncle.¹⁰¹

In Tanzania, there is a need for the government to review the system of having three distinct types of law that govern inheritance. It is suggested that the government draft a Bill regarding inheritance that is applicable to all Tanzanians, irrespective of religion, race or ethnic group. In addition, it is necessary to educate people about inheritance rights, the probate process and the value of drafting Wills. Education on these matters will empower people such that they are able to choose how to dispose of their assets prior to death and that their wishes are respected by their families.

98 *Bernardo Ephrahim v. Holario Pastory and Another*, Civil Appeal No. 70 of 1989.

99 In this case, Holario Pastory inherited clan land from her father. She sold this land to someone who was not a member of her clan. A member of her clan, Bernardo Ephrahim, filed a suit against Ms. Pastory on the basis that she had violated the Haya Customary Law (Declaration) (No. 4) Order, 1963, which states that women can inherit and use land, but not sell it. This provision was found to be inconsistent with Article 13(4) of the Constitution, 1977, which prohibits discrimination on the basis of sex and the provision was amended accordingly by the court. The court's actions were consistent with Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984, Act No. 16 of 1984, which allows courts to modify or amend laws that existed before the enactment of the Bill of Rights in 1984 so that they conform to the provisions contained in the Bill of Rights. This Act came into effect in March 1988.

100 M. Mwanatongoni 'Human rights activists seeking family courts' *The Guardian* on Sunday (Tanzania) 9 March 2008.

101 LHRC 'Reports of various Human Rights Monitors' (Report Tanzania February 2008).