THE UNITED REPUBLIC OF TANZANIA

THE LAW REFORM COMMISSION OF TANZANIA

REPORT ON CRIMINAL LAW AS A VEHICLE FOR THE PROTECTION OF THE RIGHT TO PERSONAL INTEGRITY, DIGNITY AND LIBERTY OF WOMEN

PRESENTED

TO THE MINISTER FOR JUSTICE AND CONSTITUTIONAL AFFAIRS, DAR ES SALAAM, TANZANIA

NOVEMBER,1998
DAR ES SALAAM

THE COMMISSION

The Law Reform Commission of Tanzania was established under Section 3 of the Law Reform Commission of Tanzania Act, 1980 to take and keep under review all the Law of The United Republic with a view to its systematic development and reform.

THE COMMISSIONERS ARE:

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Ms. Julie Catherine Manning	-	Full Time Commissioner
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Dr. Asha Rose Migiro	-	Senior Lecturer, Faculty of Law University of Dar es Salaam.- Part Time Commissioner

Mr. Stephen E. N. Ihema is the Secretary of the Commission

RESEARCHERS

Mr. M. M. Matt-Chikawe	-	Principal Law Research Officer
Mr. Albert A. Msangi	-	Principal Law Research Officer
Ms. Fauster Mkakili Ngowi	-	Law Research Officer
Ms. Farida ldrisa	-	Law Research Officer.

The Commission Offices are located along Luthuli Street
Haki House, P. O. Box 3580, Dar es Salaam, Tanzania Telephone Number 022-2111387/ 2123533/4.

THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION OF TANZANIA

Telegrams **TUMESHERIA .**
In reply please quote:
Telephone 111387/111390

P. O. BOX 3580,
DAR ES SALAAM.

REF. NO. LRCC/C. 60/1/II 7 TH NOVEMBER 1998

Hon. Harith Bakari Mwapachu (MP)
Minister for Justice and Constitutional Affairs
P. O. Box 9050
DAR ES SALAAM

REPORT ON CRIMINAL LAW AS A VEHICLE FOR THE PROTECTION OF THE RIGHT TO PERSONAL INTEGRITY, DIGNITY AND LIBERTY OF WOMEN

On 31st October 1991 the Law Reform Commission of Tanzania on its own motion undertook a Project on CRIMINAL LAW AS A VEHICLE FOR THE PROTECTION OF THE RIGHT TO PERSONAL INTEGRITY, DIGNITY AND LIBERTY OF WOMEN with a view to examine the following:

1. The various cases (causes) of rape, defilement, indecent assault, kidnapping for sexual purposes, incidence and degree of violence employed in such offences;

2. The adequacy or otherwise of sentences as provided for under the Penal Code and those imposed by courts upon convicted persons;

3. The Law of Evidence in respect of proof of guilt of an accused person in particular the requirement of corroboration; the relevance of previous sexual conduct of the victims;

4. (1) provision for mandatory compensation of the victim who becomes pregnant and the child who is the product of such act of rape or defilement.
   (2) provision for mandatory compensation of victims contracting HIV / AIDS as a result of rape and defilement.

5. Options on sentences: whether to provide for minimum sentences or to confine jurisdiction on sexual offences, particularly rape, attempted rape, defilement and indecent assault to the High Court.

6. Other aspects of sexual harassment of women such as female genital mutilation and other areas of their social and domestic life such as wife battery.

7. Any other matter relevant to the Project.

The Commission has completed the assignment through extensive research and public consultations countrywide.

In accordance with Section 14(1) of the Law Reform Commission of Tanzania Act 1980, the Commission has the honour to submit the Report on the subject under reference.

Hon. Mr. Justice Anthony Bahati CHAIRMAN	Julie Catherine Manning FULL TIME COMMISSIONER
Damian Saleka Meela FULL TIME COMMISSIONER	Mohamed Ismail PART TIME COMMISSIONER
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P.O. Box 3580,
DAR ES SALAAM.

REF. NO. LRCC/C. 060/1 6TH NOVEMBER 1991

Hon. Andrew John Chenge (MP)
Attorney General
Ministry of Justice and
Constitutional Affairs
P. O. Box 9050
DAR ES SALAAM

PROJECT ON CRIMINAL LAW AS A VEHICLE FOR THE PROTECTION OF THE RIGHT TO PERSONAL INTEGRITY, DIGNITY AND LIBERTY OF WOMEN

Honourable Attorney General,

On 31 st October 1991 the Law Reform Commission of Tanzania undertook the above mentioned project following the countrywide outcry on the increase of incidents on sexual and domestic violence.

2. In undertaking the above project the Commission has adopted the following terms of reference:

(a) the consideration and examination of various cases of rape, defilement, indecent assault, kidnapping for sexual purposes, incidences and degree of violence employed in such offences;

(b) the adequacy or otherwise of sentences as provided for under the Penal Code and those imposed by courts upon convicted persons;

(c) the Law of Evidence in respect of proof of guilt of an accused person - in particular the requirement by courts of corroboration and the relevance of previous sexual conduct of the victims;

(1) provision for mandatory compensation of a victim of sexual violence; maintenance of victim who becomes pregnant and the child who is the product of such act of rape or defilement;

(2) provision for mandatory compensation of victims contracting HIV/ AIDS as a result of rape and defilement;

(d) options on sentences whether to provide for minimum sentences, or to confine
jurisdiction over sexual offences, particularly rape, attempted rape, defilement
and indecent assault to the High Court;

(e) sexual harassment of women such as female genital mutilation and other areas
of their social and domestic life, such as wife battering,

(f) any other matter relevant to the Project.

3. In accordance with Section 9(1) of the Law Reform Commission of Tanzania Act, No. 11 of 1980, the Commission wishes to inform you about this undertaking.

Sgd
JudgeAnthony A. Bahati

CHAIRMAN
LAW REFORM COMMISSION OF TANZANIA

ACKNOWLEDG EMENT

The Commission would like to express its sincere appreciation to various people within and outside the Commission i.e. Parliamentarians, Researchers, Scholars and Academicians, for their co-operation and time devoted in this endeavour. The Commission is particularly indebted to the United Nations Development Programme, for its financial support to the Project.

The Commission would like also to record its appreciation to the Leaders at all levels as well as the members of the public in all regions in Tanzania Mainland for their valuable comments and views which have immensely enriched the Report.

In the final analysis however, the Commission bears full collective responsibility for both the form and contents of this Report.

EXECUTIVE SUMMARY
CRIMINAL LAW AS A VEHICLE FOR THE PROTECTION OF THE RIGHT TO PERSONAL INTEGRITY,DIGNITY AND LIBERTY OF WOMEN

THE STUDY:

In October 1991, The Law Reform Commission on its own accord decided to undertake this study with terms of reference as shown on page 2. The study leading to this Report reflects the law as it was before the enactment of the Sexual Offences Special Provisions Act, No.4 of 1998, hereinafter referred to as the Act. When the Act was enacted, heralding significant changes to the law relating to sexual offences, this Report was in the final stages of preparation. It should not therefore, come as a surprise that some aspects in the report are different from the real position of the law as it is today.

However, the Commission takes some comfort from the fact that the Discussion Paper of this Study was made available to the Minister of Justice and Constitutional Affairs during the preparation of the Bill. This in part explains why some of the recommendations contained in this Report have already been taken aboard in the Act.

Nevertheless, it is the opinion of the Commission that other recommendations contained in this Report need to be considered by the Government. In addition, the Report remains relevant because it also contains views and ideas of the people visited in the course of research, which were considered at the time the Act was enacted. The Report may therefore, be a useful source whenever it is found necessary to re-examine the Act.

THE COMMISSION

Pursuant to S.9 of The Law Reform Commission of Tanzania Act No. 11 of 1998, The Commission may undertake an examination of any matter without waiting for a reference on it by the Attorney General. The section reads;

(1) The Commission may subject to informing the Attorney General in that behalf, undertake the examination of any matter without waiting for a reference on it by the Attorney General .

(2) Notwithstanding the generality of the power conferred by subsection (1), The Commission shall not undertake the examination of any matter which it knows to be the subject of proceedings in any Court in the United Republic to which the United Republic is a party .

TERMS OF REFERENCE

The Terms of Reference require the Commission to examine the subject and come up with legal as well as social reform recommendations. Some of the issues are attitude of the court as well as the undesirable social practices such as female genital mutilation.

The following are the Terms of Reference:

a. The consideration and examination of various cases of rape, defilement, indecency assault, kidnapping for sexual purposes; incidence and degree of violence employed in such offences;

b. The adequacy or otherwise of sentences as provided for under the Penal Codeand those imposed by courts upon convicted persons;

c. The Law of Evidence in respect of proof of guilt of an accused person in particular the requirement by courts of corroboration; the relevance of previous sexual conduct of the victims;

d. Possible provision for mandatory compensation to victims of sexual violence and maintenance of a victim who becomes pregnant and the child who is the product of such act of rape or defilement;

e. Provision for mandatory compensation of victims contracting HIV / AIDS as a result of rape and defilement.

f. Options on sentences whether to provide for minimum sentences or to confine jurisdiction over sexual offences particularly rape, attempted rape, defilement and indecent assault to the High Court;

g. Sexual harassment of women such as female genital mutilation and other areas of their social and domestic life, such as wife battering;

h. Any other matter relevant to the Project.

PUBLIC HEARINGS

The Commission visited all the 20 regions of Tanzania Mainland and conducted public hearings in almost every district on the subject. The respective Safari Reports have

been compiled and form part of Chapter IV of this Report. There is a consensus throughout the country on a large number of issues presented except on the severity of sentences. The Commission has drawn its recommendations based partly on these reports.

STATISTICAL INFORMATION

The Commission research teams visited the Courts and gathered data from Court registers. The data collected therefrom has been compiled and it is contained in Chapter IV. The Commission has drawn a conclusion from this data that most of the victims as well as the culprits in Sexual Offences are young people of between the ages of 16-30 years. This is very worrying particularly when you consider that this age group is the back-bone of the Nation both morally and economically. However there has been exceptional incidents involving victims and culprits aged between 60-70 years.

CONSULTATIONS

The Commission, while carrying out research on the Project, consulted with various focus groups, in particular NGOs that deal with women rights. These groups are TAMWA, TAWLA, UMATI, SUWATA, The Legal Aid Committee of the Faculty of Law of the UDSM etc. Various research reports from these groups were also consulted.

THE REPORT, ITS SCOPE, FORMAT AND CONTEXT

This is the first enquiry in Tanzania which has considered in such depth issues relating to criminal law as a vehicle of protection of the basic rights of women and children. The general concern about the rights of women has led to women groups to research and recommend on what is to be done to protect these rights needless to say the Commission had the benefit of considering numerous other report and recommendations in many of the individual subject areas covered in the study.

The report is divided into five chapters beginning with an introduction which looks at the sexual and domestic violence perspective as well as the legal perspective. Chapter one deals with the philosophical aspect of violence and violence against women in particular be it in the family or the community in general.

In Chapter II the State of the law as it obtains in Tanzania is clinically examined. Basically the Penal Code, the Criminal Procedure Act, 1985 and the Evidence Act 1967 are revisited and commented upon.

Chapter III points out the problems existing in the law as it stands. Further, the roles of both the Court and the Legislature are analysed. The inadequacies of Procedural and the Compensation Aspects are exhaustively discussed and recommendations made thereupon.

Chapter IV contains the Research Methodology, Research Findings, Statistical Information from Court reports, women economic groups and Report on the regional visits. These are presented together with what the people recommended in public hearings/consultations. Chapter V contains the recommendations of the Commission in both aspects, Legal and Social Reform recommendations. Major amongst these is the one dealing with corroboration where it is recommended that it should not be a necessity for conviction in a rape case.

This is a major departure from the current court practice where corroboration though not a rule of law, is treated as if it were. Compulsory compensation is another aspect that is given prominence in the Commission s recommendations. Others are basically enhancement of sentences in offences against the dignity and liberty of women and some social

recommendations are made where the community, religious leaders, the state etc. are all apportioned duties to perform so as to finally have a society that respects the rights of women. The society has been called upon to own the problem in view of its seriousness and magnitude. These recommendations are divided into two categories, Legal and Social reform recommendations:-

LEGAL REFORM RECOMMENDATIONS

I. NEW LEGISLATION:-

The Commission recommends that new legislation should be made to cover the following areas:-

(i) Legislation to prohibit reconciliation in sexual offence cases. All cases must end in court except in cases of wife battering which has not occasioned grievous harm. In the latter case, reconciliation be allowed to try to restore harmony and maintain the fabric of the family.

(ii) Female genital mutilation should be prohibited. Convicts should be jailed for a minimum of 30 years and victims compensated.

(iii) In some tribes women marry other women and keep them in bondage akin to slavery, this must be prohibited. Convicts should face a minimum jail sentence of 5 years.

II SENTENCING

Since subordinate courts have consistently been imposing inadequate sentences for perpetrators of such offences as rape, attempted rape, defilement and such similar offences, the following measures should be taken so that sentences meted out to convicts are commensurate with the gravity of the offences:

(i) The jurisdiction of subordinate courts to try sexual offences cases be retained.

(ii) The law should be amended so as to provide for minimum sentences for all sexual offences, except indecent assault.

(iii) The Criminal Procedure Act 1985, be amended so as not to limit the High Court, when exercising its revisional powers, to impose a higher sentence than that which may be imposed by a subordinate court. The only limitation should be the maximum penalty that could be imposed for the offence under the relevant provisions of the law.

III CORROBORA TION

Corroboration is not a rule of law in Tanzania. It is merely a requirement of practice cultivated out of prudence. The High Court has held two divergent views on the issue of corroboration. On the one hand the court has treated corroboration as a strict requirement for conviction in sexual offences, while on the other, it has ignored its necessity. The Court of Appeal has not yet made its stand on this issue. On the issue of corroboration, the Commission recommends that:-

The law should state unequivocally that corroboration is not a strict requirement for conviction in sexual offences. Lack of corroboration should not result in automatic acquittal of the accused in such offences; rather the courts should be required to assess the credibility of the evidence of the victim as a lone witness, on its own merit, as they do in respect of other offences.

IV COURT PROCEDURE

As a general rule, all criminal proceedings must be conducted in an open court. This is to ensure that justice is not only done, but is also seen to be done. Research has revealed equally strong contending views on whether the prosecution of sexual offences should be conducted in an open court or in camera. There are those who argue that conducting sexual offence cases in an open court inhibits the victim from being an effective witness. They speak of the victim being humiliated, or raped in public , as it were. But there are those who insist on a public hearing and they state that the hearing will not only have a deterrent effect on the general public, but it will also be transparent and remove the doubts/fears that a hearing in camera may attract the element of corruption. As for cases involving children, both sides agree that these should be heard in camera.

The Commission recommends that the Criminal Procedure Act 1985 be amended appropriately so as to state;

(i) All sexual offence cases, involving children must be heard in camera.

(ii) Adult victims in sexual offences be given a choice to have their evidence (cases) heard in camera or in public.

(iii) Rape and defilement should not be bailable offences.

COMPENSATION

Sexual offences normally result in physical and mental injury.
The victim is injured for no fault of hers. This situation needs a redress and compensation is ideal and called for.

The Commission recommends that:

(i) The Criminal Procedure Act 1985 be amended to provide for a minimum and mandatory compensation order to adequately cover the extent of damage caused to the victim.

(ii) The government should. pay adequate compesation to the victim and then recover the same from the convict.

(iii) If the victim is infected with the HIV-AIDS, then the convict must be sentenced to death

(iv) All costs resulting from sexual offences maintenance, medical, and counselling, inter alia, to be borne by the government and recover the same from convict. .

SOCIAL REFORM RECOMMENDA TIONS

Since the increase of crime, and sexual crimes in particular has a strong bearing on what is happening in society, it is important to suggest what measures, the Government and the community in general could take to tackle this problem. The Commission has the following recommendations in this respect;

II **THE ROLE OF THE GOVERNMENT**

(i) Measures should be adopted by the Government to ensure that women subjected to violence sexual or otherwise, and where appropriate, their children should have specialized assistance such as rehabilitation, assistance in child care, maintenance, treatment and counseling.

(ii) The Government should encourage and assist NGOs such as the Legal Aid Committee of the Faculty of Law of the University of Dar es Salaam, The Tanganyika Law Society, Tanzania Women Lawyers Association, SUWATA, Committee on Violence Against Women under TAMWA, to work out elaborate and effective programs in this regard.

(iii) The Government should encourage and assist pressure groups such as the Medical Women s Association and UMATI, to formulate viable programmers aimed at giving specialized assistance, maintenance, treatment and counseling to women and where appropriate, children of women subjected to violence.

(iv) The Government should control the mass media, so that pornography and related activities are not allowed in the Media.

(v) The Government at both the local and national levels should take severe punitive action on unlicensed video shows, unlicensed liquor drinking, and all unlicensed businesses such as prostitution, unlicensed gambling etc. It should further do all in its power to curb the importation and sale of pornographic videos and materials.

(vi) The Police to be sensitized so that they acquire a positive attitude and treat with dignity, victims of sexual offences. This should be through their basic as well as informal training.

(vii) The Government should fight against laxity in enforcement of laws.

(viii) The Government should create centres for counselling of victims as well as centres for the rehabilitation of offenders.

(ix) The Government should introduce some basic aspects of legal education related to human rights in the school curriculum in Primary and Secondary Schools.

II THE ROLE OF THE COMMUNITY

(i) The community should be sensitized to encourage women to report cases of sexual offences and battery to appropriate legal authorities.

(ii) Religious leadership should play a more active role in sensitizing members of the community with regard to norms, ethics and values of the society.

(iii) Parents should play a more effective role in the positive up bringing of their children.

(iv) The Community should ostracise and reject witch doctors who through their prescriptions direct people to commit crimes, sexual or otherwise. People should be encouraged to report these witch doctors to Government authorities.

(v) Community should scoff at indecent dresses worn by women.

(vi) Community should unite against child labour.

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PREAMBLE

It must be made clear to men that the problem of male violence is not simply women s problem. Men must take responsibility and begin to work towards change. The notion that manhood is proved by the extent to which a man is able to impose his authority and even inflict pain on women must be challenged by men themselves. Rape and other forms of male violence feed on this notion (V ide Conventional Manhood:. The Need for a Reassessment. By Jonah K. Gokora).

INTRODUCTION

1. Men and women are by their inherent nature moral and social beings. They have therefore mutual claims upon one another. So men in a society must not violate these rights as far as women are concerned.

2. The Right to personal integrity, dignity and liberty of women in Tanzania is a well founded claim. Violence against women in all it manifestations, from wife battery, rape, incest, sexual harassment, sexual slavery, defilement of young girls, indecent assaults, abductions, kidnappings for sexual purposes and kindred offences are basic Human Rights Violations. These abuses occur in every nation and are found at workplaces, streets, and refugee camps, learning institutions and the homes.

3. This Report deals, inter alia, with issues arising from campaigns mounted by womenfolk all over the world to raise awareness amongst women about their human rights and to sensitize women and men to make efforts to restore the status of women to be on equal footing with men by fighting against violence perpetrated by men against women. Our society has been able to raise the question of what has gone wrong with individual men only when a man rapes, when a man batters, when a man sexually violates or humiliates some woman for his pleasure.

Sexual and Domestic Violence Perspective

4. In this Report the violence addressed to is two fold; that is, sexual and domestic violence. These acts are crimes which are morally and legally wrong. One could also say that this Report is about human rights of women, i.e. the protection of the rights to personal integrity, dignity and liberty of women in Tanzania. The Report examines the law as it is in our Penal Code and other laws. There will also be examination of the interpretation placed on each section of relevant laws by the courts in Tanzania.

5. In Tanzania violence against women is dealt with under various laws mainly the Penal Code especially Chapter XV which deals with offences against morality. The offences mentioned therein humiliate, brutalize and inhibit women from full enjoyment of their liberty and other rights. Chapter XXIV of the Penal Code deals with offences connected with other crimes of violent nature e.g. assaults and batteries including violence generally and wife battering in particular. This legal position has been clearly put by USA President Thomas J to Dr. Ruth 1803 as follows:

> It behoves every man who values liberty of conscience for himself to resist invasion of it in the case of other .

6. Indeed, it is true that sexual offences and other acts of violence do impinge on the personal integrity, dignity and liberty of women. For it has been stated that every person is entitled to these rights. For dignity is a state of being dignified in mind, character or bearing and integrity is the state of being entire; wholeness; probity; honesty; uprightness, while liberty means freedom from bondage. [Vide Collins New English Dictionary]. The above meanings relate to human rights which are reflected in the right of personal security, personal liberty and the

right to property. Any meaningful social change must be that which removes abuse on individuals vis avis their life, their liberty, and their dignity as was stated by Emma Golddman. My Further Disillusion, 1924.

> The ultimate end of all revolutionary social change is to establish the sanctity of human life, the dignity of man, the right of every human being to the liberty and well being

The Legal Perspective

7. In this Report we want to make it clear that the law irrespective of basic human rights should embrace in particular the rights of the woman in our society. Many years ago it was echoed by our national leader thus:

> We have already agreed on certain basic principles; now is the time to put these principles into operation. All the time that TANU has been campaigning for Uhuru we have based our struggle on our belief in the equality and dignity of all mankind and on the Declaration of Human Rights. (See Nyerere:
>
> Independence message to TANU as published by Newspaper Uhuru (1).

8. As a matter of historical fact, equality, dignity and human rights precede governments and we now find that rights are acknowledged above governments and their states in the case of international law. International law is founded on rights, that is, well grounded claim which civilized states as individuals make upon one another. As government come to be more and more clearly established, rights are more clearly acknowledged and protected by the laws, and right comes to mean a claim acknowledged and protected by the law. A legal right, a constitutional right, means a right protected by the law, by the constitution; but government does not create the idea of right or original rights; it acknowledges them; just as government does not create property or values and money; it acknowledges and regulates them. (Vide BAUVIERS LAW DICTIONARY P.2961). Therefore the equality and dignity enunciated by Mwalimu Julius Nyerere are inherent human rights per se.

9. The tenets stated herein above are enshrined in our Constitution in Articles 12, 13,15, and 16. Article 12 deals with freedom and dignity of all human beings while Article 13 provides for equality before the Law and prohibits torture or inhuman or degrading treatment. Article 15 provides for the right to personal freedom while Article 16 provides for the right to privacy and personal security.

10. Tanzania is a signatory to both the 1948 Convention on the Universal Declaration of Human Rights, and the Convention on Elimination of All Forms of Discrimination Against Women.

11. Article 1 of the Universal Declaration of Human Rights states that: All human beings are born free and equal in dignity and rights. This Article which has formed the basic principle on which the whole notion of Human Rights rests, embodies the spirit of egalitarianism and self determination. Henceforth, the right to equality and dignity has been the recurrent themes of all International Human Rights (Charters) instruments.

12. On similar lines, the African Charter on Human and Peoples Rights (1981), which most African Countries have ratified including Tanzania, states in its preamble that: Freedom, Equality , Justice and Dignity are essential objectives for the achievement of the legitimate aspirations of the African people.

13. However, a glimpse at the situation of women in Africa shows that the outlook is bleak and does not bode well for them. This is because issues like violence against women, discrimination at work places, sexual harassment, sexual abuse of female (and children) traditions harmful to women (i.e. female genital mutilation) lack of consent on marriage; and wife battering have only recently been brought into focus but have not been effectively redressed thus depriving them of the constitutional right to security and dignity. At the same time it has been the custom for members of each clan to have reconciliation among themselves. The custom such as this one encourages violation of human rights against women. People governed by such customs which encourage people to reconcile rather than go to the law enforcement agencies might perpetrate the violation of human rights against women. A further analysis of the types of violence against women and children will be shown.

14. The sexual offences and domestic violence committed by men against women is against the basic rights in our Constitution, the Universal Declaration of Human Rights, and the O.A.U Charter on Human and Peoples Rights.

15. Apart from the basis of protection of women rights as human beings, these rights are specifically protected by the specific laws that protect womenfolk. Chapter XV of the Penal Code already referred to, forms the core of our Criminal Law on sexual offences. The Chapter creates offences connected with sexual violence while Chapter XXIV deals with offences connected with other crimes of violent nature, e.g. assaults and batteries including violence against women generally and wife battering in particular.

CHAPTER I

VIOLENCE AGAINST WOMEN

1.0 Women all over the world suffer violence more than men — be it violence of war or domestic violence. For some reason men all over the world feel like they have a right to commit violence against women:

> Gender has always been problematic all over the world, precisely because gender is a cultural concept and virtually every society around the world remains, in actual fact, patriarchal and sexist. Women every where, are cheated, exploited, abused and killed by men of all colours, heights and shapes who regard them as second class citizens. But that does not make it right and cannot prevent us to work for change. (V ide Journal on Social Change No. 40, July 1991 Harare Zimbabwe: Editorial.)

1.1 It is necessary to have a look at the meaning of the word Patriarchal. The patriarchal attitude or male chauvinism is connected squarely with the fact that some tribes being patrilineal and others matrilineal. According to the Chambers Twentieth Century Dictionary, New Edition, the word patriarch means one who governs his family by paternal right one of the early heads of families from Adam downwards to Abraham, Jacob and his son etc.

The adjective patriarchal means belonging or subject to a patriarch: like a patriarch;of the nature of patriarch. Patriarchalism is the condition of tribal government by a patriarch.

1.2 It must be borne in mind that most tribes in Tanzania as elsewhere in Africa belong topatrilineal clans. They have the PATRIA POTESTAS - the paternal power; the authority which the law vests in the father over the persons and the property of the legitimate children. Hence we do talk of a patriarchal attitude in connection with sexual and domestic violence as a problem connected with the attitude of men towards women. This is the basis of the preamble to this Report.

1.3 With respect to women s health, hazardous traditional practices such as early marriagesand pregnancies, female genital mutilation, nutritional taboos, inadequate child spacing and unprotected deliveries, are realities which lead to maternal morbidity in present day Africa. Cultural practices have to a large extent been instrumental in the big number of female dropouts in institutions of learning; lack of comprehensive family life education leading to teenage pregnancies, marriages at an early age sometimes as young as 12 years.

1.4 There has been a marked emphasis on traditional practices which push women into repetitive tedious and arduous work, especially the production of food, taking careof household chores as well as their reproductive functions. These multiple responsibilities have turned them into beasts of burden.

1.5 Although women are main producers, it is mostly men in the villages who take part in agricultural education, learn new techniques, use of modern tools and equipment which are provided by government through development programmes[2].

1.6 In the past, many of the gender patterns were found in education, for example girls being encouraged to take up the home economics subjects while boys are encouraged

to take up science subjects; this trend reflected as well as sustained gender patterns in employment. Even in adult education and adult literacy campaigns, the methods used in implementing these programmes have been gender biased. Women are advised on how to improve their reproductive roles within the existing sexual division of labour, while men are taught improved methods along with reading and writing skills[3]. This has inevitably led to an unequal participation of women in decision making and management in all levels of matters.

1.7 In the majority of cases men predominate in jobs with their higher pay while women have been limited to jobs with lesser pay. Women s employment and involvement in wage/salary employment, agriculture and the informal sector is constrained by several factors, like women s relative lack of education and management skills, socio-cultural attitudes and the economic recession in the world.

1.8 Because of the women s relatively lack of higher education and training in management, women are not accorded opportunities in jobs that give recognition and influence and which ultimately lead to financially rewarding positions. Despite the ratification of International Conventions on Human Rights by, most African countries, to-date there are still many discriminatory practices in the implementation of law and legislation in the regions. For example, the Civil Codes in many countries have not been adequately reviewed to amend/repeal those provisions which are discriminatory against women and to determine on the basis of equality the legal capacity of women, particularly the laws pertaining to marriage, inheritance, divorce, alimony and custody.

VIOLENCE AGAINST WOMEN IN THE FAMILY

1.9 Violence against women in the family includes battering, sexual abuse of female children in the household, dowry related violence, femicide, sexual harassment, verbal abuse, psychological violence confinement, traditional practices harmful to women. Despite existing legal provisions protecting women against abuse, women in Tanzania are victims of all forms of violence an issue which until recently was rarely discussed openly.

1.10 Violence against women is caused by the uneven power relationship between men and women. Therefore wives are not the only group of battered women. Women battering includes brothers beating their adult sisters, male colleagues beating their female colleagues, and even some sons beating their mothers, boyfriends beating their girl friends, etc. This is an issue which is basically based only on people with power, and power is both economical and physical as well as social and moral.

1.11 Research has shown that laws[4] governing domestic violence and sexual violence are quite specific in that they stipulate that it is a criminal offence for any individual to inflict injury, molest, assault or use threatening language against another individual(s) but most women are inhibited from free access to the legal process.

This is caused by the following factors:

(i) Insufficient exposure of women to contemporary world affairs.

(ii) The question of insufficient literacy and lack of awareness of the Law

(iii) Customs which favour reconciliation rather than litigation and prosecution.

(iv) Lack of focus on Women s multiple responsibilities.

(v) Fear of the stigma related to the circumstances of sexual offences committed.

(vi) Lack of seriousness by the law enforcement agencies.

(vii) Outdated traditional customs, which encourage wife battering as a sign of love.

1.12 In a survey conducted by the Tanzania Media Women s Association (TAMWA) [5] involving 300 women in Dar es Salaam (1990) on sexual harassment, the circumstances of the nature of offences committed discouraged 15 out of all 17 victims of rape and attempted rape from pressing charges as it would ref1ect badly on them. The two who had the courage to press charges and believed that the law would not only protect them, but would also bring the perpetrators of the crime to justice, were disappointed. Instead of being treated as the victims, their private lives were stripped bare and roles became reversed. This is also apparent in the Safari Reports from the Regions by researchers of the Law Reform Commission in 1995 and 1996.

1.13 In a survey conducted in 1989 [6] in the three districts of Dar es Salaam on domestic violence, it was revealed that six out of every ten women have experienced violence either in the form of threats or shoving from their spouses/partners. Safari Reports from the Regions by Researchers of the Law Reform Commission discussed in this Report also reflect the same experience.

1.14 In another survey[7] on sexual harassment (1990)also conducted in the three districts of Dar es Salaam over 90 per cent of the 300 residents interviewed admitted having been sexually harassed either through abusive language, groping, brushing against a woman s body, to outright assault. Such behaviour is prohibited and punishable under the law. Section 135(3) of the Penal Code provides:.

> 135(3) Whoever intending to insult the modesty of any woman utters any word, makes ,any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such women is guilty of a misdemeanor and is liable to imprisonment for one year .

Section 66 of the Law of Marriage Act, 1971 states:

For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.

1.15 At the same time section 135(1) of the Penal Code stipulates that:

Any person who unlawfully and indecently assaults any women is guilty of a felony and is liable to imprisonment for 14 years.

1.16 Most women may not be aware that there are provisions within the law which protect them against battery, sexual harassment and other forms of abuse because culturally some women have been brought up to believe that they are inferior, therefore it must be their fault and that they must have provoked their spouses into violence. And even those who may be aware of their rights, how many would have the courage to prosecute or litigate their cases?

Even if they have the courage to do so there is still the fear that even in a court of law justice will not prevail because courts invariably area a domain of men.

1.17 Research findings further show that since Tanzania most families are extended, the culprit of violence is often the main bread winner for the entire family, and if he got imprisoned, the whole network of support would stop. And this tends to prevent a woman from taking legal action and she would bow down to pressure rather than face possible ostracisation from her family. Thus, most women remain silent and endure the abuse.

VIOLENCE AGAINST WOMEN WITHIN THE COMMUNITY

1.18 Violence within the community includes rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

1.19 Another aspect of violence is in the customary law which has been reflected in marriage where a woman is treated as an unequal partner. In many communities a woman s consent to marriage is not considered necessary and because of the bride wealth which is given to her parents a wife is regarded a lesser partner in marriage. There have been many instances where a woman was inherited without her consent by the husband s male relatives when the husband died.

1.20 The law in Tanzania is quite explicit on matters of domestic and sexual violence against women. Section 135 of the Penal Code provides that, any person found guilty of indecent assault against a woman will be liable to imprisonment for a maximum term of 14 years. While section 136 of the Penal Code provides that any person found guilty of defilement of a girl under the age of 14 years is liable to a minimum term of imprisonment for life. There is also a minimum sentence of 20 years for this offence.

1.21 Sexual violence is instigated by social forces and exists in various forms i.e. mental, physical, environmenta1 etc. Sexual harassment and battering are among the worst forms of violence against women.

1.22 Some of the men who violate women sexually do so because they feel they can get away with it while women put up with it because they feel there is nothing they can do especially since the stigma attached to raped women is quite heavy.

CHAPTER II

THE STATE OF THE LAW [8]

THE PENAL CODE (CAP. 16):

2.0 To demonstrate the gravity attached to the violence against women by our society, as is also the case with the other countries, heavy penalties have been provided for under our Penal Code. For example the offences of rape[9], and attempted rape[10] carry maximum penalty of life imprisonment respectively with or without corporal punishment, while defilement of girls under 14 years of age now carries a minimum penalty of 20 years jail with or without corporal punishment[11]. Indecent assaults on female is punishable with a maximum penalty of seven years[12] and abduction of a woman or girl for sexual purposes is punishable with a maximum penalty of seven years[13.]

2.1 The Penal Code provides for other offences of violence against women. These are insulting the modest of a woman; to have any unlawful carnal knowledge by threats or intimidation, false pretence representations of any woman or girl detention of any woman or girl against her will with intent for unlawful carnal knowledge, incest by male and assault (battery) and unnatural offences.

2.2 Besides the afore stated penal provisions there are other laws touching on the issue of violence against women; for example, section 66 of the Law of Marriage Act, Act No.5 of 1971 states:

> For the avoidance of doubt, it is hereby declared that notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.

THE CRIMINAL PROCEDURE ACT, 1985

2.3 The Criminal Procedure Act, 1985 contains provisions which may keep the general public out of trial proceedings related to sexual offences and other offences of violence which are perpetrated by men against women. The Criminal Procedure Act, 1985 and the Law of Evidence No.6 of 1967 provide requisite guidelines as to how evidence shall be taken and accepted in the courts of law. In essence the two laws have some inhibiting provisions which may prevent victims or witnesses to come forward *to* give evidence on certain sexual offences. For example section 186(1) of the Criminal Procedure Act states:

> The place in which any court is held for the purpose of inquiring into or trying any offence shall unless the contrary is expressly provided by an Act for the time being in force be deemed an open court to which the public generally may have access so far as the same can conveniently contain them save that the presiding judge or magistrate may, if he considers it necessary or expedient:

(a) in interlocutory proceedings; or
(b) in circumstances where publicity would be prejudicial to the interest of

(i) justice, defence, public safety, public order or public morality; or
(ii) the welfare of persons under the age of eighteen years or the protection of private lives of persons concerned in the proceedings, order at any stage of the inquiry into or trial of any particular case that person generally or any particular person other than the parties thereto or their legal representative shall not have access to or be or remain in the room or building used by court.

2.4 It is noted that courts of law hold hearings in open courts. This has been observed to be an inhibiting factor because it has been found that the agony experienced by a woman victim in sexual assault cases before courts is of great magnitude to the extent that there is no difference between being raped and giving evidence as a key witness at the trial of her alleged rape except that this time it happens in front of a crowd, which will mostly be composed of men. It would not matter even if the crowd in court would be composed mostly of women because even women, on account of social, and cultural up bringing are made to think that it must be the fault of the victim and that she must have provoked her partner into violence. The accused along with the crowd mostly will be entitled to hear the forensic medical evidence, the description of the woman s or girl s genitalia, the marking on her nipples, the colour and size of her bruises on her buttocks and the presence of semen on her body, legs/ thighs, clothes, etc. This can be tormenting on the part of an ordinary woman of good character when a victim of a rape is called upon to testify on such an incident in an open court. Such a woman finds herself in a very inhibiting environment for her to tell all about the incident.

2.5 As if this situation is not bad enough, there is evidence that some magistrates, prosecutors, defence lawyers, and court clerks have not been in support of victims of domestic and sexual violence. More often than not they harbour a biased opinion against women in favour of men.

2.6 More often than not victims are made to feel that they have failed to conduct themselves properly within the societal norms, within the rules of the community in which they live and therefore it is taken before the eyes of the audience in the courts that it is their fault. Therefore the societal norms and the practise as it is has been an impediment to prosecution of cases involving violence against women generally and domestic and sexual violence in particular.

2.7 From a Paper presented at a Workshop held in Morogoro from 4th - 6th December 1996 on Mechanism to protect and promote the Human Rights of women by TAMWA[14] the following situations emerge: violence against women and children is now a global issue and in Tanzania, according to statistics compiled by the Ministry of Home Affairs between 1989 to 1991, the situation of violence against women and children is alarming.(See Appendix A). The violence involves battery, sexual harassment, rape, defilement and indecent assaults. Research by the Law Reform Commission in the Regions of Tanzania Mainland in 1995 and 1996 has confirmed this situation.(See chapter IV)

2.8 These days incidents of defilement are rampant. In newspapers today in Tanzania reports abound that even as young as three months old babies have been defiled. This is indeed disgusting. But it would appear that the incidents of rape and defilement are practised all over the world today. There have been public outcries for the Government to take stringent measures against such an outrageous crime.

2.9 The law to protect women and girls against these offences as already stated is very clear indeed. However, it is not always easy for women and girls to have recourse to the law because there are other circumstances which must be taken into consideration. For instance there is a provision in the Criminal Procedure Act, that there should be reconciliation in certain cases. Section 163 of the Criminal Procedure Act states:

> In the case of proceeding for common assault or for any other of fence of personal or private nature the court may, if it is of the opinion that the public interest does not demand the infliction of the penalty, promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of the proceeding or on term of payment of compensation or other term approved by the court, and may thereupon order the proceedings to be stayed.

2.10 It is contended that offences of sexual violence and assaults when they involve spouses fall under this category because their commission may not be without reason. Furthermore, it is the attitude of mind arising from social-economic situations which leaves women with very few options available to them as it has been observed:

> They are economically dependent on their men. In addition neighbours, relatives and friends have often discouraged a woman from pressing charges against a violent husband because it would reflect badly on her in the community. Women are not aware that there are stipulations within the law which protect them against battery, sexual harassment and other forms of abuse because culturally women have been brought up to believe that they are inferior, therefore it must be their fault and that they must have provoked their partners into violence. Women also fear stigma if they take legal action against violence. Families have been known to close ranks against a battered woman who wishes to press charges and quite often these have included members of her own family. Most women also do not report cases of domestic violence to the police because they are ashamed and often explain the injuries they sustained during an attack by saying that they fell down or that they bumped against a door or furniture. [15]

2.11 In Tanzania, a number of pressure groups notably NGOs have started activities in the last five years to raise awareness and concern on discriminatory practices and also to lobby the government to revise those laws which are discriminatory to women.

THE EVIDENCE ACT, 1967

2.13 Although Courts in Tanzania have all along strictly required corroboration in all sexual offences, this is a matter of practice rather than a matter of Law. In fact the Evidence Act, 1967 as amended under Section 143, provides that no particular number of witnesses shall be required for the proof of any fact. Section 143 reads:

> Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.

2.14 Equally the Evidence Act under Section 127 has given full value to the evidence of a child of tender, years, i.e. below the age of 14 years in all criminal proceedings. Section 127(2) provides:

> Where in any criminal cause or matter any child of tender years called as a witness does not, in the opinion of the court, understand the nature of the oath his evidence may be received, though not given on oath or affirmation, if in the opinion of court, to be recorded in the proceedings, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.

Section 127(4) provides:

> Notwithstanding any rule of law or practice to the contrary, the evidence of a child of tender years received under subsection (2) may be acted upon by the Court as material evidence corroborating the evidence of another child of tender years previously given or the evidence given by an adult which is required by law or practice to be corroborated.

CHAPTER III

THE PROBLEMS CONNECTED WITH THE LAW

An Overview

3.0 However serious our society takes such offences to be, the enforcement of the law has, in practice, gravely watered down the same, through inadequate sentencing, gender-biased requirement of corroboration for proof of such offences, requirement of testimony in open court by the victim, very restricted construction of an attempted rape and want of mandatory compensation provisions for the victims of such rimes. All these have rendered the intended protection of women s right to personal integrity, dignity and liberty under our Penal Code, very ineffective. Such a situation has been contributed partly by our courts and partly by our Legislature.

The Role of the Courts

3.1 It is regrettable that the practice of our courts in sentencing in respect of offences of this type has often times not at all reflected the seriousness our society attaches to such offences as expressed in our Penal Code s penalty provisions. This is often the case with magistrates in subordinate Courts, who also sometimes find support from some judges of the higher courts. That seems to be due i) partly to the limitation on sentencing powers of the subordinate courts in respect of non-scheduled offences (i.e. offences for which no minimum sentence has been prescribed) where a custodial sentence may not exceed five years as provided for under S. 170(1) (a) of the Criminal Procedure Act, 1985, on asingle count, or eight years in the case of more than one count (16); (ii) partly due to non-observance or ignorance of the provision of the section which empowers a subordinate court to commit a convicted person to the High Court for sentencing should the subordinate court consider that a higher sentence than it has the power to impose ought to be imposed; (iii) partly due to want of proper appreciation of the nature and gravity of the offences on the part of some of the magistrates and judges; (iv) partly due to corruption.

3.2 In this regard it could be said that some magistrates would even try such offences without much seriousness. This is often reflected by the manner and type of questions put to the complainant woman. This attitude was also once observed by the Victoria (Australia) Law Reform Commission,... whether as a wife or prostitute, women are, in many cases, regarded as being for the sexual use of particular men [17]

3.3 This is certainly a wrong attitude towards such offences. For the criminal sanction is not against sexual intercourse as such. That could, indeed, be said to be a natural act expected between man and woman in conformity with the order of nature in the same way as to do any work is a human act expected of any human being. What is at stake here in both cases is the violation and disregard of a person s freedom of choice- the power to choose and pursue what is seemingly good for one s well being or promotion of one s happiness, which freedom is ultimately the basis of accountability for one s actions in our society. Interference with or disregard such offences are, in effect, of the humanity of the woman concerned by those who so perpetrate such sexual offences. As Sullivan once put it[18]

> When a woman has been sexually violated she has experienced a crime not only against her body but also against her psyche and her whole self. She has for a period of time been cut off from the sense of cohesion and control that to a greater or lesser extent is the raison d etre of all human beings .

3.4 Grave as such offences are it is therefore vital that our courts and the law should clearly demonstrate the same seriousness to both offenders and potential ones.

The Role of the Government and the Legislature

3.5 'Not all areas of the law have been neglected by the Legislature like the area for the 'protection of the right to personal integrity, dignity and liberty of women. A glance at the area of the law involving property will demonstrate what we mean by the above.

3.6 For many years our nation has clearly demonstrated its serious concern over acts of embezzlement of public funds, robberies, burglaries, cattle thefts and acts of economic sabotage. That has been done by the enactment of the Minimum Sentences
Act, 1963[19], which was later repealed and replaced by the Minimum Sentences Act, 1972[20], providing for minimum sentences that courts have to impose upon convicted persons in respect of offences specified therein. We had also the enactment of the Anti-Economic Sabotage Act 1983[21] under which a special Anti-Economic Sabotage Tribunal[22] was set up to try Economic Sabotage offences. It was presided over by a judge of the High Court sitting with two lay members. Its decisions were by the majority opinion. The tribunal however was characterized by the absence of representation by legal counsel as this had been prohibited under the Act.

3.7 'Following criticism by the Bar and Bench, the Act was repealed and replaced by the Economic and Organized Crimes Control Act, 1984[23] which was subsequently amended in 1987[24] and 1989[25]. Under the Act, the High Court, sitting as an Economic Crimes Court[26], has exclusive jurisdiction over offences specified as economic crimes[27]. However, an Economic offence that appears to be not all that serious may be transferred for trial to any subordinate court under a certificate of the Director of Public Prosecution (DPP) [28.]

3.8 Yet all such legal measures have been in respect of economic or property offences, so to speak. Economic stability and prosperity is for the promotion of the well-being of a given society - which, in effect, is the well-being of the humanity of the human persons who constitute the society.

3.9 It follows, therefore, that as compared with the economic wellbeing, the humanity of the human person is of paramount importance. Thus to the extent that our nation has demonstrated its serious concern on the rising rate of economic crimes which prompted. Parliament to enact laws that now impose minimum custodial sentences of up to 30 years [29], it ought, in our view, to have viewed offences against humanity itself - such as rape - with even greater concern and harsher penalties. This then calls for the review of the state of Criminal law as a vehicle

for the protection of the very humanity of women-folk-their dignity, integrity and liberty, as a whole.

SHORT -COMINGS OF THE LAW

3.10 What in our view, appears to be shortcomings in our law in providing effective protection of the dignity, integrity and liberty of the female members of our society in respect of sexual offences, fall under four major aspects: sentencing, evidential and procedural requirements, and compensation.

The Sentencing Aspect

3.11 As alluded to earlier, although under the Penal Code, the offences of rape attempted rape and defilement of a girl under 14 years, carry a maximum penalty of life imprisonment, that, in practice, has, except for the offence of defilement, been severely whittled down.

3.12 In the majority of cases decided by subordinate courts the range of lawful sentences have been a fine, (in a few extreme cases), and imposed upon the accused are the cases of R v. NYERERE MAELE [30] and R v. BAHATI s/o HALINGA and 4 others [31]. In the first case the court imposed a sentence of a fine of 1,000/=. In the second case a sentence of a fine 5,000/= was imposed on each of the five accused. Ironically the learned magistrate did not mince his words in remarking, in the process of sentencing, that the offences were very serious.

3.13 In the exercise of its supervisory powers. When the two cases came to the notice of the High Court, Mbeya Registry, in the course of inspection of such court s fortnightly criminal returns, the records of the two cases were called for. They were then revised and sentences were enhanced to five years imprisonment in each case. Let it be pointed out that had it been in the exercise of its appellate jurisdiction the High Court would have had the discretion of imposing higher sentence than the five years jail [32]. However, when exercising revisional jurisdiction the sentencing power of the High Court is limited to the maximum sentencing powers of the subordinate court [33].

3.14 To demonstrate, in general, the problems under discussion cases appearing in Chapter IV of this Report have been collected from the High Court Zonal Centres.

3.15 From such cases it becomes crystal clear that sentences imposed in respect of the various sexual offences rarely exceeded the five-years jail mark. And it is worth pointing out that where a sentence exceeded the five-years term of imprisonment, it should be regarded as being illegal, so long as it was not imposed by the High Court in exercise of its sentencing power in cases where an accused person is committed to the High Court for sentencing. This is so because offences such as rape, attempted rape, defilement of a girl under 14 years,[34] and indecent assault, do not fall under the Minimum Sentences Act 1972, as amended in which case a subordinate court may impose a sentence of up to eight years of imprisonment[35]. However the maximum prison penalty that a subordinate court may impose in respect of any other offence is five-years as provided for under Section 170(1)(a)of the Criminal Procedure Act, 1985. The imposition of such sentences in excess of what is authorized by law is

often times out of either sheer enthusiasm or deliberate non observance of the law by the presiding magistrate.

3.16 It is also noteworthy that out of a total of 62 sexual assault cases it is in 21 cases only that conviction was obtained, representing 33.7% of all cases filed and determined by the court. The remaining 41 cases ended up into either acquittals or withdrawals. This represents 66.3% of all the cases filed and determined by the court.

3.17 We also learn from the cases that young girls between the ages of 14 and below constitute a greater number of victims of sexual assaults than the older women. There were 27 cases of defilement of girls under 14 years of age, representing 43.5% of all the cases. On the other hand, there were 24 rape cases representing 38.7% of all the cases and 11 cases of indecent assault representing 17.8% of all the cases. This shows that young girls are the ones who, fall easy prey. This is partly due to their physical weakness and partly due to immaturity and therefore lacking proper appreciation of the nature of the act which then makes it easier for them to get lured into engaging in such acts.

3.18 It is also to be noted that the majority of the perpetrators of such sexual offences are the sexually most active young men ranging between the ages of 14 years and 35 years. Within this age-group there were 37 accused persons representing 59.70/0 of all the accused persons. Those aged above 35 years were 25 accused persons, representing 40.3%.

3.19 It is also interesting to note that of the victims of rape and indecent assault, the majority were again those within the age group that is sexually most active, that is between the ages of 14 and 35 years. These were eighteen in number while those above the age of 35 years were only four. Eight others had their age not recorded and therefore unknown. But judging from the age of their assailants it is most likely that their age, too, did not cross the 35 years age mark.

3.20 It will also be noted that out of 62 sexual assault cases, 17 rape cases were accompanied with violence, while in 7 rape cases violence was not used; 10 cases of defilement were accompanied with violence while 17 of them were not; in one case of indecent assault violence was used against the victim. whereas in 10 cases violence was not employed.

The Evidential Aspect

3.21 One factor that is most known to impede on effective application of our criminal law as a means to the protection of the dignity, integrity and liberty of women, is the strict, and we may add, conventional requirement of corroboration in all sexual offences. No doubt, everyone of us knows that acts of rape, defilement and indecent assaults, are not done in public. They are among the most clandestinely committed offences. The difficulty to assemble one s witnesses to such type of offences can thus be easily appreciated.

3.22 Yet courts in this country, as a matter of practice, cultivated out of prudence, have all along strictly maintained, to the extent of rendering it as a rule of law, that there

can rarely be a conviction and even most rarely can such a conviction of a sexual offence be sustained by an appellate court, in the absence of corroboration. In this regard the following cases will help to demonstrate such a stance.

3.23 In the case of MCHELENGWA NJILINGI S/O MASALA. v. R (1968.) HCD 370 four accused persons were convicted of the offence of rape by a subordinate court. It was in evidence that the accused persons and the complainant had been drinking together and that all of them were drunk. At mid night one of them carried away the complainant. The complainant also testified that the 1 st and 2nd accused then had sexual intercourse with her by force and that later the 3rd and 4th accused, had sexual intercourse with her, but she was too tired and drunk by that time to resist. Another prosecution witness saw the 3rd accused having sexual intercourse with the complainant and a torn piece of her clothing was found at the scene. The 1 st and 3rd accused persons admitted to have had sexual intercourse with complainant but claimed that she had consented. The 2nd and 4th accused denied having had sexual intercourse with the complainant.

24 On appeal to the High Court by the four appellants, Seaton, J, as he then was, quashing the convictions of the four appellants, gave the following reasons:-

(1) that there was no corroboration of testimony that the 2nd and 4th accused had intercourse with the complainant,

(2) that there might be authority supporting a conviction for rape when the complainant is too drunk to resist. (Citing R v.Camplin (1845) 1 Cox CC 220). However, in the present case there is no corroboration of complainant s testimony that the intercourse with the 1st and 3rd accused was without her consent. Neither the torn piece of clothing nor the fact that she was drunk would necessarily negative the fact of her consent;

(3) that the trial magistrate also failed to consider the possibility that because of their drunkenness the accused had no intention to commit rape and mistakenly believed that the consented complainant had consented.

3.25 A closer examination of the decision of the High Court judge makes it appear to us to be of the type that placed no regard on the credibility of the evidence of the victim in such cases. It seems to have proceeded on the assumption that unless corroborated, all that was said by the victim was a lie. The trial court believed the victim as having told the truth. There was nothing that went to contradict her evidence. In fact, it will be noted that in each of the groups of the appellants mentioned to have raped her, one admitted to have had sexual intercourse with her though claiming to have done so with her consent. No reason was advanced by the appellate court as to why the story of the complainant should be discredited as against those accused persons who had denied to have had any sexual intercourse with her other than that there was no corroboration of her story to that effect. Yet it was not denied by any of the accused persons that they were together with the two other accused persons when they had liquor together with her and when she was ravished.

3.26 In our view, all such facts should have weighed more against them as to give credibility to the evidence of the complainant. Furthermore, the view of the learned judge that the trial magistrate failed to consider that, because of their drunkenness, the appellants had no intention to commit rape and mistakenly believed that complainant had consented was, in our view, driving too much in favour of the appellants. Here the question is: Can there be a mistake of fact by a drunken person? To answer this question the provision under our Penal Code that deals with the legal principle of mistake of fact must be examined. Section 11 of our Penal Code provides:

> A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist. (Emphasis supplied).

3.27 It is evident from the above provision that for a mistake of fact to exist, one must show that he so made the mistake under an honest and reasonable belief that the state of things were as he believed. Yet it is common understanding that a person labouring under state of intoxication has his power of judgement reasoning, impaired by the alcoholic drink. He therefore often behaves unreasonably. Under such circumstances he cannot be heard to have entertained an honest and reasonable belief on the existence of any set of things. Thus in the case under discussion, the learned judge gave the benefit of doubt to the appellants to the prejudice of the interest of the complainant woman, which they did not, in law deserve. They had no basis for and were, in fact, incapable of forming an honest and reasonable, but mistaken belief that the complainant, through want of physical resistance on account of her drunkenness, had consented to having intercourse with them.

3.28 The other factor to be considered is the learned Judge s off-hand rejection of the fact that because of her state of drunkenness, coupled with the existence of her torn piece of cloth, that went to negative her alleged consent to intercourse. One wonders whether with such stance courts can really be taken to apply the criminal law for the intended protection of the dignity, integrity and liberty of women!

3.29 In the case of R v. RASHIDI MOHAMED (1968) HCD 269, the accused was convicted by a subordinate court of having committed an unnatural offence cis 154 (1) of the Penal Code. There was ample evidence that a brutal rape per anum had been committed upon the complainant, an elderly woman, but the only evidence connecting the accused with the offence was the testimony of the complainant herself.

3.30 On appeal, Georges, C. J.,as he then was, allowing the appeal, held:

(1) That there is a general rule that corroborative evidence is required to support the testimony of the complainant concerning a sexual offence.

(2) That if a magistrate notes the absence of corroboration, warns himself of the danger of convicting in the absence of corroboration, but nevertheless finds that the evidence is so convincing that he feels it safe to convict, it is possible to support the conviction. However, no such course was followed by the magistrate in the present case.

(3) Conviction was accordingly quashed.

3.31 In this case again the hapless old woman s credibility in her evidence was torn apart simply because she alone had testified for the prosecution and the trial magistrate had not warned himself against the danger of convicting in absence of corroborative evidence, though, undoubtedly, he so convicted the appellant upon believing the complainant s testimony. In fact, the appellate court did not observe any weak points in the complainant s evidence. Yet it is the power of the first appellate court to review and assess the evidence at the trial on its own, and form its own opinion about it. It is surprising that the court did not find a conviction fit in cases of this kind.

What a shock this must have been to the hapless old woman and a license to the would be rapists!

3.32 Furthermore, for a Court to convict of a sexual offence in the absence of corroboration and even rarer still an appellate tribunal to uphold such conviction, there must be a very strong case to justify a conviction as decided by Baron, J in the case of ABBAS s/o RAMADHANI v. R. (1969) CD 226.

3.33 In that case, the appellant was convicted by a subordinate court of the offence of rape and was sentenced to two years imprisonment and twelve strokes of corporal punishment. It was proved that one morning, a party of three women and two men including both the complainant and the accused person, went out into a sisal plantation to cut firewood. While there they separated and lost sight of each other. Then later while out of the sight of the others, the appellant approached the complainant, caught her and demanded sexual intercourse. Upon her refusal, the appellant threatened to thrash her with the panga he was then carrying. She was then carrying a child with her on her back. Appellant took away the child, put it on the ground and then after removing his trousers he pushed her to the ground and had intercourse with her. She could not cry out for help out of fear following the appellant s threats upon her life with his panga and because her mouth was also covered by appellant.

3.34 After raping her, the appellant ran away. The complainant immediately ran and reported the incident to her colleagues, who also confirmed such report in their testimony before the trial court. Both the complainant and the appellant were then medically examined the same day. They were found to have both engage in sexual intercourse, within hours of such examination. It was also found that the complainant had bruises on her thighs and there was clotted blood from her vagina.

3.35 On appeal and upon such facts, his Lordship (may his soul rest in peace) had this to say:

(1) In Yotamu Mtweve and two others v. R. (Crm. Apps. No. 368 of 1969 unreported) I upheld conviction of the three appellants upon being satisfied that apart from the magistrate having fully directed himself in his judgment on the need for corroboration, but proceeded to convict the accused of the offence of rape in the absence of corroboration upon being fully convinced that the complainant had told the truth, there was also considerable supporting evidence, which, though it did not constitute corroboration as such, was strongly confirmatory of the complainant s evidence. In this instant case, however, the magistrate has not directed himself on the need for corroboration.

(2) It is rarely that a court will convict of a sexual offence in the absence of corroboration, and even rarer still that an appellate tribunal will uphold such conviction. The requirement of corroboration in sexual offences a rule of practice and although it has been elevated, particularly in this part of the world to almost, if not altogether, a rule of law, the fact remains that it is a rule of practice, and corroboration is not in law, nor its absence fatal to a conviction. But there must be a very strong case to justify a conviction in the absence of corroboration.

(3) The evidence establishes that, the complainant and appellant went out together in a party and that whilst cutting firewood the individual members were out of sight of one another. The medical evidence establishes that both had sexual intercourse at about such time. The Police evidence would also confirm: that the scene pointed out by the complainant appeared to bear out that an incident of the nature described by the complainant had taken place there. And the medical evidence as to the injuries on the complainant would appear to negative consent. The appellant disappeared when the complainant made her complaint to the other members of the party. It may well be argued that even if some of these factors in isolation do not constitute corroboration of the complainant s evidence, they do connect the appellant with the offence.

(4) On the assumption that the attendant factors even in combination do not constitute corroboration in law, I propose to consider whether the conviction could be upheld even in the absence of corroboration. (After recapitulating the above facts).....The question poses itself, why should this court now interfere with this instant conviction for a sexual offence because of the absence of corroboration, when, as I think sufficientiy demonstrated, all the factors which render it dangerous to convict on sexual charge ... without corroboration are absent in this case... Though it cannot be overstressed that magistrates should always consider the question of corroboration and warn themselves of the danger of convicting in the absence of corroboration, in the particular circumstances of this case for the reasons I have attempted to set out I am not persuaded that this court would be justified in interfering with the conviction.

3.36 What comes out from the above case is that the requirement of corroboration in sexual offences is only a rule of practice, founded upon the wisdom and prudence of courts. Nevertheless it should not be applied so strictly as to render it appear to be a rule of law, so that in the event corroboration is not found in a given case, and the trial court has overlooked to warn itself before convicting an accused person of such an offence, it should not follow, as day follows night, that on appeal the conviction will have to be quashed.

3.37 Rather, in absence of such corroboration, despite the failure of the trial subordinate court to warn itself on the danger of convicting someone of a sexual offence without corroboration, the appellate court should still exercise its power of reviewing the evidence before the trial court. Should it be satisfied upon such review of the evidence before the lower court that in the light of the evidence available there was no danger for any failure of justice having been committed, then the conviction of the trial court should not be disturbed. This therefore, goes a long way in balancing an otherwise lopsided stand of the courts in this country as exemplified by the two cases considered earlier.

3.38 That however, does not really solve the problem. All that it amounts to, is to create another approach on the issue of corroboration in sexual offences: one being for the automatic rejection of the complainant s case in the absence of corroboration where the trial court has convicted an accused person without warning itself of the danger of passing such, conviction; and the other being that notwithstanding the failure of the trial court to so warn itself, the first appellate court will not interfere with the conviction on being satisfied, upon review of the evidence before the trial court, that there was no danger at all of there having been a failure of justice consequent upon such conviction.

3.39 Yet section 143 of the Evidence Act, l967, as amended by Act No. 19 of 1980 provides:

Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact. With such provisions one would have expected that courts would, as was in the case of ABASI s/o RAMADHANI cited above, treat the evidence of the victim of sexual offences, if she turns to be the only witness, with such caution as is judicially appropriate in any other case where the complainant turns out to be the only witness. It is time that this strict requirement by the courts that no conviction of a sexual offence will stand unless corroborated, is abandoned, either legislatively or through changed attitude on the part of our judges.

3.40 True, precaution must be there but need not be different from what is normally taken in respect of witnesses in other cases. For instance, prior to the amendment of our Evidence Act, in 1980, it was the law that no conviction could proceed from the lone evidence of a child of tender years, unless there was corroboration of the same with some material evidence of an adult person implicating the accused. The evidence of another child of tender years could not provide such corroboration in so far as, it, too, required corroboration. That has now changed. For, as in the case of a victim of a sexual offence, there has been no scientific proof that the evidence of a child of tender years is, most cases, all lies. Following the 1980 amendment of the Evidence Act the position now in Tanzania is that

courts may now convict an accused person on uncorroborated evidence of a child of tender years, i.e. one aged 14 years, or below; and the evidence of a child of tender years may now be corroborated by the evidence of another child of tender years[36].

3.41 This, however, will only be possible where the child of tender years has been able to give evidence on oath in cases where he/she has been found by the court to understand the nature of an oath; or where he/she is found to be possessed of sufficient intelligence and to understand the duty of telling the truth. That, we think, sufficiently demonstrates the problem of corroboration in sexual offences in our country .

3.42 The other evidential aspect that thwarts efforts to provide effective protection of women s right to personal integrity, dignity and liberty in relation to sexual assaults is the court s construction as to what constitutes an attempted rape. The line of authorities, some of which have been here in after cited, show that it is extremely difficult to prove the offence of attempted rape. What is in often times charged as attempted rape does, when proved, end into the substitute conviction of the offence of indecent assault. Bearing in mind that the offence of attempted rape does, under our law, carry a maximum penalty of life imprisonment, and the offence of indecent assault carries a maximum penalty of fourteen years imprisonment, in effect, therefore, the frequent substitution of the ,offence of indecent assault for the offence of attempted rape, tends to undermine the deterrent effect that a conviction of the offence of attempted rape, with the probable attendant sentence of life imprisonment, would otherwise have upon the perpetrators of such sexual offences.

3.43 Let us now examine what the law is and what the courts say about the offence of attempted rape. Section 380 of our Penal Code defines an attempt to commit an offence in the following terms and we quote:

> When a person, intending to commit an of fence begins to put his intention into execution by means adapted to its fulfillment, and manifests his intention by some over act, but does not fulfil his intention to such extent as to commit the offence, he is deemed to attempt to commit the offence. It is immaterial that by reason of circumstances not known to the offender it is impossible, in fact, to commit the offence.

3.44 The courts have this to say about attempted rape. In the case of R v. HARUNA s/ o Ibrahim (1967) HCD 76 the accused was convicted of the offence of attempted rape. It was proved before the trial court that the accused had dragged the complainant woman to a ditch, placed his hand over her mouth and pulled down her underclothes while lying on top of her. On noticing a passer by observing him, the accused fled away. There was no evidence that at the time of fleeing he had undressed himself.

3.45 When the record of the lower court was called for and revised by the High Court, it was held thus:

The acts of the accused did not constitute attempted rape, since he had not yet undressed. Rather the acts constituted mere preparation of that crime. (Citing the case of Adamu Mulira v. Regina (1953) XX EA. C. A. 223). The facts did, however, constitute the crime of indecent assault.

3.46 In the case of GAMAIYO s/o MELAU v.R (1968) HCD 228, the appellant had been convicted by a subordinate court of the offence of attempted rape. It was proved by the prosecution that the accused threw down the complainant woman; threatened her with a knife and tore off her underpants. The complainant caught appellant by his private parts and prevented him from unbuttoning his pants. At this point an alarm was raised and the appellant ran away.

3.47 On appeal, Platt, J, as he then was, (quoting. from Adam s/o Malaria v. Regina, 1953 EACH 223) held thus:

> To constitute an attempt to rape there must be evidence of an attempt to have sexual connection with the woman notwithstanding her resistance. In the instant case we feel some doubt whether the learned trial judge fully appreciated the necessity of finding an intention to have sexual intercourse at all costs notwithstanding any resistance on the part of the woman plus an attempt to put this intention into effect.

3.48 In the case of BAKARI s/o JOSEPH v. R (1969) HCD 225, the appellant was convicted of the offence of attempted rape and sentenced to 18 months imprisonment. It was proved by the prosecution before the trial in the subordinate court that appellant had pushed the complainant woman down who then fell on grass near a path. He then held her right hand and pulled her two pieces of Kanga, leaving her wearing only one piece of Catting cloth. He tried to pull it out and in doing so he pulled her legs apart. He then stood up and started to unbutton his trousers, when the complainant escaped and raised an alarm. She thought he wanted to kill her and she was resisting.

3.49 On appeal against conviction, Bramble, J, as he then was, held that appellant s action, should be considered as mere preparation and could not support a conviction for attempted rape. A conviction for indecent assault was then substituted.

3.50 What then can we say about the decisions in the three above cases on attempted rape. We propose that before examining such cases a word should be said about the major ingredients of an attempt to commit a criminal offence as provided for under S. 380 of the Penal Code quoted above. These are the following:

(a) an intention to commit an offence;
(b) doing something to put such intention into execution;
(c) by means adapted to its fulfilment;
(d) manifesting such intention by some over act;
(e) failing to fulfill such intention to such an extent as to commit the offence.

3.51 In an attempt to commit an offence, the intention to commit a particular offence can be manifested either by an express statement by the accused to commit such an offence or by inferring the same from the accused overt act done in the course of executing such intention. For such inference to be made, the overt act must be one that is sufficiently proximate as to enable an onlooker to conclude that the person so doing such act must have intended to commit that particular offence and nothing else.

3.52 As was said in the case of R v. EAGLETON (37), per Parke, B, Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are.

3.53 F.B. Sayre, in his article Criminal Attempts (1928) 41 Rarv. L. R. at p. 843, has this to say[38]:

> For all indictable attempts then the defendant must be proved to have intended some objective in fact criminal but to have failed. in the accomplishment of his objective. The defendant s failure may have been due to anyone of several different reasons. In the first place, it may have been because the defendant was interrupted from completing all his intended acts, which would, had they been completed, have resulted in an accomplished crime. This group of cases involves as a general rule no very intricate legal problem, but rather a nice question of judgement as to whether the defendant s acts were of such a preliminary nature as to constitute mere preparation for his intended crime a mere setting of the stage so to speak or whether they have come sufficiently close to an accomplished crime to constitute an indictable attempt. Something more than mere preparation or planning is essential...
> ... The line between preparation and attempt, however, must at best depend largely upon the particular circumstances of each case the seriousness of the crime attempted, and the danger to be apprehended from the defendant s conduct. Since the extent to which criminal law may justifiably encroach upon and restrict the freedom of and liberties of the individual varies directly with the extent to which social and public interests are endangered, it follows that the more serious the crime attempted, or the greater the menace to the social efforts on the part of the defendant or others, the further back in the series of acts leading upon to the consummated crime should the criminal law reach in holding the defendant guilty for an attempt. For instance, the mere placing in joke of a harmless substance known to be comparatively harmless in food which it is expected the victim will eat but which in fact he does not come near, might be held not to constitute an indictable attempt to commit a simple assault, whereas under an indictment for murder the same court might well hold that, the placing of a harmless substance in the victims food in the belief that it is poison and with the intent to kill, does constitute an indictable attempt. In the language of Mr. Justice Homes, As the aim of the law is not to punish sins, but is to prevent certain external results, the act done must come pretty near to accomplishing that result before the law will notice it... Every question of proximity must be determined by its own circumstances and analogy is too imperfect to give much help. Any unlawful application of poison is an evil which threatens death, according to common apprehension, and the gravity of the crime the uncertainty of the result, and the

seriousness of the apprehension coupled with the great harm likely to result from poison even if not enough to kill, would warrant holding the liability for an attempt to begin at a point more remote from the possibility of accomplishing what is expected than might be the case with lighter crimes: [(Commonwealth v. . , Kennedy 170 Mass.18(1897)].

It is thus manifestly impossible to lay down any mechanical or hard and fast rule for the drawing of the line between preparation and indictable attempt and such efforts in this direction the last proximate act doctrine must be unhesitatingly rejected.

3.54 Williams, at p. 623, puts the argument in the following terms:
The requirement of proximity refers to the sequence of event leading to the crime

that the accused must have progressed a sufficient distance along the intended path. It follows that if he has done the last act that he intended to do in order to effect the crime, his act is necessarily proximate. [39]

3.55 And in the case of ORIJA v. I.G.P. (1957) Northern Region, Nigeria Law Report (N.R.N.L.R) (40) 190 Smith, J., as he then was, had this to say, among other things(41):

> But it is not necessarily the last act in every case which proves the attempt. All that is required is an act immediately connected with the particular offence which clearly shows that the offender was attempting to commit it. That is what section 4 of the Criminal Code(Nigeria) requires, i.e. an overt act which clearly manifests the intention but which does not amount to its fulfilment... The test in EAGLETON is applicable to section, 4 of the Criminal.
>
> Code(Nigeria) because it is necessary to ascertain the acts immediately connected with the crime, in order to decide which overt act or crime. But a more practical test is that suggested by the learned author of RUSSELL ON CRIME (10th Ed. p. 1790):
> the prosecution must prove that the steps taken by the accused must have reached the point when they indicate beyond reasonable doubt what was the end to which they were directed!

3.56 In the light of the above principles what can be said about the three cases under discussion? In the first place, we take it to be that the accused s acts of assaulting the complainant women and throwing them down at isolated places were means adapted to the fulfilment of the accused s intentions. For the intention of raping them could not be fulfilled unless and until the complainant women lay on the ground. As to the overt acts, such were, in the case of HARUNA IBRAHIM the pulling down of her underpants, lying on top of her; in the case of GAMAIYO MELAU, the tearing off the complainant s underpants, who then caught hold of accused private parts which then prevented him from unbuttoning his pants; and in the case of UAKARI JOSEPH, the pulling off of her apparel and while the complainant s legs had been pulfed apart and the unbuttoning of the accused s trousers.

3.57 In our view and in the words of Smith, J., above cited, such acts pointed out as overt acts were such that they were immediately connected with the offence of rape and, therefore, in the words of the learned author of RUSSEL ON CRIME referred to above, the prosecution did prove that the steps taken by the accused person in either of the three cases reached the point where they indicated beyond all reasonable doubt that the end to which they were directed was rape.

3.58 As pointed out earlier, there is no doubt as to the seriousness our society attaches to the offence of rape and other allied sexual offences. In the circumstances, we would go by the proposition of the learned author, F.B. Sayre, above cited, that bearing in mind the seriousness of the crime of rape, this crime determines how further back in the series of acts leading up to the consummated crime should the criminal law reach, in holding an accused person guilty of an attempted rape. It should, therefore, be sufficient to hold someone guilty of the offence of attempted rape. There by overt acts manifested by him towards the fullfilment of his intention, there can be no reasonable doubt that accused intended to commit rape. Courts should not, therefore, cling to the view that for such offence to be committed the accused must have manifested his last overt act, as judges in the three cases discussed above thought.

3.59 Even if we were to go by the test as laid down in the case of ADAM MULIRA, above cited, which appears to have provided the guiding principle in the three cases under discussion, we submit that such test was met in the three cases. That test was the, finding by the court that the accused had an intention to have sexual intercourse at all costs notwithstanding any resistance on the part of the woman, including an attempt to put this intention into effect. For in all cases the accused persons demonstrated that they were bent to achieve their objective by doing all what they could up to the point where their actions were interrupted against their wishes either by other people who turned up to the rescue of the complainant woman upon her alarm or following the efforts of both the victim and the rescuers. Their overt acts mentioned above were attempts to put their intentions into effect.

3.60 Furthermore, to treat such acts of accused persons as mere reparation, and not amounting to an attempt in the circumstances of the cases, clearly overlooked the provision of the law, which states that[42]:

> It is immaterial except so far as regards punishment, whether the of fender does all that is necessary on his part for completing the commission of the offence or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from further prosecution of his intention.

3.61 It follows therefore that the decisions in the three cases did not attempt to strike a balance in the interest of justice to help contain this menace to the security of women in accordance with the letter and spirit of the law, but unfairly weighed more in favour of accused persons by looking at the case law only. Such attitude of courts greatly contributes to the insecurity of women with great adverse effect on their dignity, integrity and liberty. This therefore needs to be arrested, if women are to enjoy fully their rights to personal dignity, integrity and liberty in this country.

The Procedural Aspect

3.62 The practice in Tanzania has been that all sexual assault cases are, without exception, tried in open courts. Undoubtedly, that adds trauma to, the victim. For the cross-examination that goes with such trials tends to instill a sense of great shame, loss of good reputation, dignity, and integrity on the part of the complainant woman. It is not, therefore, surprising that at times in the course of cross-examination the complainant may turn dumbfounded with her eyes down and in tears, not because she has nothing to say, but because of her feeling as to the shame to herself that the utterance of the information sought would cast on her, and the fact that some facts pertaining to sex are not customarily uttered in public. The effect of this is to render the complainant witness incoherent and therefore unable to instil in the mind of the trial judge or magistrate the impression of an honest and truthful witness, thus seriously affecting the credibility and weight of her evidence before the court.

3.63 One modern solution to such state of affairs has been the introduction of a procedure whereby the complainant woman is allowed to testify under a closed circuit television as is the case with the testimony of children. This however, is only possible in countries with advanced or modern television services. In a country like Tanzania Mainland where television service is not advanced the alternative would have to be to have the testimony of the complainant heard in camera.

3.64 The agony experienced by women victims of sexual assault cases is, perhaps, best demonstrated by the lamentation by Kate Gilmore, an Australian, which is quite representative of the position obtaining in Tanzania Mainland and many other developing countries of which most African states are. She had this to say[43]:

> There is no dif ference between being raped and giving evidence as a key witness, at the trial of your alleged rapist except that this time it happens in front of a crowd... The crowd will mostly be men. While there are now women in the judiciary they are in the minority and if your luck runs true to form your presiding judge will be male. And although there is an increasing number of women in the ranks of the legal profession, women, as defence barristers and women as prosecutors they, too, are in the minority. You will have no choice as to who prosecutes your case, nor will you meet the barrister who will prosecute on your behalf before the day of your offender s trial.
>
> .. Unlike you, the accused along with the rest of the crowd is entitled to hear the forensic medical evidence; the description of your genitalia, the markings on your nipples, the colour and sizeof your bruises on your buttocks, the presence or absence of semen on your legs or mouth, the finding of the internal gynaecological examination...
> ...Unlike you they can hear about the presence or the absence of loosened pubic hair, of flakes of skin under your finger nails, of sexually transmitted diseases.

3.65 That then clearly demonstrates how gravely tormenting the moment must be when a woman victim of rape is called upon to testify on such an incident in an open court. She thus finds herself in a very inhibiting environment for her to tell all about the incident. Justice demands therefore that such state of affairs must be remedied if we are to do justice to the women-folk for the better protection of their dignity, integrity and liberty through the criminal justice system.

3.66 It is suggested that the law should not only be inclined towards the protection of the rights of the accused person at all costs, but also be balanced in such a way so that the rights of the victim are equally protected. For example, there is no point for the law to allow a defence counsel to dig into the past of the victims private life trying to show how her sex life was before the incident which is the subject matter of the case. Not only are such facts irrelevant in most cases, but also even if they are relevant, they cannot be the reason for digging into the victims past. After all, the victim is in court not because of her own choice but because something has been done to her. She has suffered enough even without her past being exposed and it is like adding salt to injury to required her to expose her past. Our law is indeed a strange law; for it allows the victim s past to be unearthed while at the same time disallowing the accused s past to be unearthed in a similar way. We are aware of the fact that in some jurisdictions such state of affairs is not permitted by the courts and a defence counsel cannot be asking questions with a view to unearth the victims past.

The Compensation Aspect

3.67 The power of courts in Tanzania Mainland to order an accused person to pay compensation to the victim of crime has been in our books for a long time. Generally that is now provided for under S.348(l)of the Criminal Procedure Act, 1985.

It is there provided as follows:

> Section 348- (1) When an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by the person by civil suit, such court may, in its discretion and in addition to any other lawful punishment order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable.

3.68 As we have noted, the compensation awardable is for material loss or personal injury. It is also to be noted here that whether or not to order such compensation against the convicted accused person in favour of the victim of the criminal act, remains the discretion of the trial court. Thus failure to make such order is neither appeal able nor and subject of a revision by a higher court.

3.69 The result is that in most cases courts in this country have overlooked the need to apply the law to have victims of sexual assaults awarded compensation against their assailants. This may be due to want of appreciation that by dint of such crimes the victims have been subjected to serious mental and emotional suffering, though they are often found to have not sustained serious physical injuries.

3.70 It is, however, to be noted that in terms of the Annex to UN s Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power(44), Item (1), on Victims of Crime, it is there provided as follows:

> V ictims means persons who, individually or collectively, have suffered harm, including physical or mental, injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States including those proscribing criminal abuse of power.

3.71 It follows, therefore, that victims of sexual assaults, should always be considered by the courts for the award of compensation for their mental injury and emotional suffering, notwithstanding that no serious physical injury has been sustained. That will not only serve as consolation to the victim but also as an aspect of deterrence to the consolation to the victim but also as an aspect of deterrence to the potential perpetrators of such sexual assaults.

3.72 One way by which our government and Parliament demonstrated how seriously concerned they were with offences that are now scheduled, that is, for which a minimum sentence has been provided, was to require courts to order for mandatory compensation. It is thus provided under Section 7 of the Minimum Sentence Act, 1972 as follows:

> Section 7(1)Notwithstanding the provisions of Section 176 (now Section 348)of the Criminal Procedure Code (now Criminal Procedure Act, 1985) where a Court convicts any person of a scheduled offence other than an offence under the Prevention of Corruption Act, 1971, the court shall, if it is of the opinion that such person has obtained any property as a result of the commission of the offence and that the owner of the property can be identified, make an order that the person convicted shall pay to the owner of the property compensation equal to the value of the property as assessed by the court.
>
> (2) An order under this section may be made at any time after the sentence has been passed, and where it has not been made immediately after the sentence has beenpassed the court which passed the sentence or any court having revisional jurisdiction over it may make such order at any subsequent time on the application of the owner of the property or on its own motion.

3.73 It is submitted that to demonstrate the serious concern over sexual assaults on women our government and Parliament should legislate for mandatory compensation in all sexual offences and not to leave the matter to the discretion of courts. This conforms with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which in item 5 of the Annex to the Declaration states:

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, in expensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

This, apart from serving as a punitive deterrent measure to the perpetrators of such crimes, would also save the victim of such crimes from the inconvenience, as well as the cumbersome and expensive process of a civil suit.

CHAPTER IV

RESEARCH FINDINGS

RESEARCH METHODOLOGY

The Commission s research on Criminal Law as a vehicle for the protection of the right to personal integrity, dignity and liberty of women mainly in Tanzania Mainland focussed on the following:

(a) Examination of Records on Criminal Returns in the High Court .

(b) Examination of Records in the Primary Courts in selected places in the country.

(c) Collection of views from Women Economic Groups.

(d) Collection of views from the Public during Regional visits.

CRIMINAL RETURNS IN THE HIGH COURT ZONAL CENTRES

4.1 Research on Domestic Violence and Sexual Offences against women has been carried out in the following High Court Zonal Centres:

- T anga High Court Centre
- Dar es Salaam High Court Centre
- Mtwara High Court Centre
- Mbeya High Court Centre

Tanga High Court Zonal Centre as well as the Resident Magistrate and District Courts

Tanga Region:

4.2 RAPE: 24 cases were filed between 1990 and 1994 and were dealt with as follows:
Number of rape cases filed 24 Number of rape cases withdrawn 9
Number of rape cases where accused were acquitted 4 Number of rape cases transferred 1
Number of rape cases where accused were found guilty 8 Number of rape cases not finalized 2
Number of accused, convicted and imprisoned were 8. The sentences ranged from 1 year to 20 years. The culprits were mostly 16 - 43 years of age.

4.3 **ATTEMPTED RAPE:** In the same Tanga High Court Centre, there were two attempted rape cases filed. In one case the accused aged 21 years was discharged under section 98(a) of the CPA, and in the other case the accused who was 19 years of age was found guilty and sentenced to ten months (10) imprisonment.

4.4 **INDECENT ASSAULT**: In all the Districts in the Region there were 10 cases of indecent assault, out of these cases were withdrawn and 4 cases were tried,3 attracted a conviction while there was an acquittal in one case. One case was not finalized. Sentences ranged from TSH. 5,000/= fine, 10-20 strokes to ten years imprisonment for a man who was 50 years of age. Most of the offenders were between 15 years and 32 years of age except one who was 50 years old.

4.5 **DEFILEMENT:** There were a total of 16 cases dealt with in Court. 6 cases were withdrawn, 7 cases ended with conviction of the accused persons, 2 cases resulted in acquittal while one case was still pending in Court. Sentences imposed ranged from 8 strokes to imprisonment for 20 years plus a fine of 10,000/=. The accused persons were of the age of 15 to 30 years except 2 who were 49 years old. The Research however did not show the particulars of the victims/complainants.

4.6 **ABDUCTION:** There were three cases of abduction which were all withdrawn. Accused person s age ranged between 20 and 24 years. Court records are silent on the reasons for the withdrawal as well as the particulars of the victims/complainants.

4.7 **KIDNAPPING:** There was only one case of kidnapping which was withdrawn and the Research did not reveal the reasons for the withdrawal. No particulars of the victim/complainant were recorded by the court.

4.8 **ATTEMPTED RAPE:** Two cases -were filed: one case obtained a conviction whereat the accused aged 19 years was sentenced to 10 months imprisonment. In the other case the accused aged 21 years was discharged under section 98(a) of the Criminal Procedure Act, No. 9/85.

4.9 **INDECENT ASSAULT:** Ten cases were recorded out of which five cases were withdrawn, 3 obtained a conviction; in one case the accused was acquitted, and the remaining case was not finalized at the material time. Sentences imposed range from 5,000/= fine, 20 strokes to 10 years imprisonment for an accused person aged 50 years. The other offenders were between 15 - 32 years old. Particulars of the victims were not recorded nor the reasons for withdrawal.

Kilimanjaro Region:

4.10 RAPE: There were 27 cases of rape filed in court, 11 cases were withdrawn, 9 obtained conviction; there were 2 acquittals, while 5cases were still pending in Court. Sentences meted out ranged between 3 to 5 years imprisonment although the maximum sentence is life imprisonment with or without corporal punishment. The ages of the accused persons were between 18 - 38 years. Nothing was recorded on the reasons for withdrawal and Particulars of the victims.

4.11 **ATTEMPTED RAPE:** Only one case of attempted rape was recorded. It was however withdrawn. No particulars of the victim and reasons for withdrawal were recorded.

4.12 **INDECENT ASSAULT:** There were four cases of indecent assault out of which three were withdrawn and the remaining obtained an acquittal. Neither were the reasons for the withdrawal nor the particulars of the victims given.

4.13 **DEFILEMENT:** 17 cases of defilement were recorded, out of which 9 were withdrawn. Six obtained conviction with sentences ranging from 6 strokes to 15 years imprisonment. There were 2 acquittals. The ages of the accused ranged between 14 years- 33 years. Neither particulars of the victims were given nor the reasons for the withdrawal.

4.14 **ABDUCTION:** There were three cases of abduction two of which were withdrawn. The remaining obtained an acquittal. No particulars of the victims and reasons for withdrawal were given.

Dar es Salaam High Court Centre:

4.15 Research revealed that sexual abuse related offences are on the increase and that the rate of defilement and unnatural offences is alarmingly high. The victims are mostly teenage girls, while the culprits are mostly in the same age group. Research has further shown that generally most of the cases are withdrawn by the Prosecution (police) under Sections 222, 225(5) and 98 of the Criminal Procedure Act No.9 of 1985. The common reason for such withdrawal and dismissal of the cases is non appearance of the victims or key witnesses. In some instance cases are withdrawn due to prayers from the victims or their representatives on grounds that there has been reconciliation between the parties hence no need for the case to proceed in court.

4.16 **RAPE:** There were 24 cases of rape, 9 out of which were withdrawn, 4 obtained an acquittal, 8 obtained a conviction, 2 were pending while one was transferred to another court. Sentences meted out ranged from 1- 20 years and the culprits were of the age of 16 - 43 years.

Dar Es Salaam Region
Resident Magistrate s Court -Kisutu

4.17 **RAPE:** There were 17 cases of Rape filed. 2 cases obtained conviction; 2 an acquittal while 13 are still pending. Ages of the accused range from 1 7 - 46 years while sentences meted out were 4 and 5 years imprisonment.

4.18 **ATTEMPTED RAPE:** Four Cases of attempted rape were recorded, out of which 2 obtained a conviction, l an acquittal while the remaining was still pending in court. No particulars with respect to the ages of the culprits and the victims were recorded.

4.19 **DEFILEMENT:** There were a total of 92 cases of defilement, out of which 29 obtained a conviction 47 an acquittal and 36 cases were pending. Sentences imposed ranged from 5-12 and 1 month - 20 years of imprisonment and 5 - 12 strokes. Ages of the culprits ranged from 14 - 56 years. No particulars of ages of the victims were recorded.

4.20 **INDECENT ASSAULT:** Only one case of indecent assault was filed and was still pending in court at the material time.

4.21 **ABDUCTION:** There were sixteen cases, out of which only one case had been tried leading to a conviction. A sentence of one year imprisonment was imposed. 5 cases earned an acquittal while 10 cases were pending. The suspects were between 16 - 39 years old.

4.22 **UNNATURAL OFFENCES:** There were 42 cases involving unnatural offences. 4 cases earned an acquittal while 8 cases obtained a conviction. 30 cases were still pending at the time of the research. The records made no mention of the sentences imposed, while the ages of the accused ranged from 14 - 70 years of age.

4.23 **INCEST:** There was only one case of incest by male pending in Court at the time of the Research. No particulars of ages of both the accused and the victim were recorded. Resident Magistrate s Court-Kivukoni

4.24 **RAPE:** There were 31 cases of Rape filed, out of which 7 obtained a conviction, 9 an acquittal while 15 are still pending. The sentences meted out were from a fine of 10, 10 — 12 strokes to 5 years imprisonment.

Morogoro Region:

4.25 **RAPE:** There were 20 cases of rape recorded, of which 5 earned a conviction,6 an acquittal and 9 were pending at the time of research. The sentences meted out range from 12 months to 5 years imprisonment. Ages of the convicts range from 19 to 50 years.

4.26 **INDECENT ASSAULT:** Five cases of indecent assault were recorded. All the cases were dismissed either under Section 222 or Section 98 of the Criminal Procedure Act, 1985.

4.27 **DEFILEMENT:** There were 32 cases recorded out of which 14 cases obtained a conviction, 6 an acquittal and 12 cases were still pending at the time of the research. The sentences meted out were 12 strokes, to 2 - 20 years imprisonment. The accused persons were between the ages of 16 and 60 years.

4.28 **ABDUCTION:** There were 9 cases of abduction recorded. 1 case obtained an acquittal while 2 cases obtained a conviction. 6 cases were pending at the time of the research. Sentences meted out ranged from 1 - 20 years imprisonment and the accused persons were between the ages of 16 and 58 years. No particulars of the ages of the victims were given.

4.29 **UNNATURAL OFFENCES:** There were 19 cases recorded, out of which 8 attracted a conviction, 2 an acquittal and 9 were pending at the time of the research. Ages of the accused persons ranged between 10 and 38 years, the majority being from 10 - 25 years. No particulars of the victim s age were recorded. The sentences meted out were:

(i) Conditional discharge of 6 months to two youths aged 10 and 15 years.
(ii) 8 and 12 strokes to two youth aged 15 years.
(iii) 5 years imprisonment to 3 accused persons of between 13 and 36 years.
(iv) 4 years imprisonment to an accused aged 33 years.

4.30 **INCEST BY MALES:** One case of incest by males was recorded. The accused was 39 years old. The case, Criminal Case No. 24/92, was still pending at the time of the research in June 1995.

Mtwara High Court Centre

4.31 The Mtwara High Court Centre caters for Mtwara, Lindi and Ruvuma Regions. The research conducted shows that sexual offences e.g. Rape and Defilement are a common phenomenon in the area, hence the people do not bother to report the matter to the Police or any other authority. However, for those cases which are finally reported to the police, they are reported very late and evidence is difficult to assemble. Further, reports are made for the purpose of obtaining PF.3s for hospital purposes. In addition research has established that victims do not report these incidents because of:

- Æ fear of stigmatizing themselves and their families and clans;
- Æ fear of revenge by the culprits at the conclusion of the trial.

4.33 It should be noted that in Mtwara Region the research shows that most of the cases on sexual violence are not filed in court for several reasons including:

- Æ Late reporting of the offences and disappearance of the victims, thus making it difficult to obtain sutncient evidence for prosecution.
- Æ Reconciliation between the parties.
- Æ Problem of identification of the suspects as most of such offences take place at night.
- Æ Corruption and lack of seriousness on the part of the Police.

4.34 Three women groups were interviewed in Mtwara Region, while Lindi Region was not visited due to transport and time constraints.

4.35 **RAPE:** There were 98 cases recorded and only 4 cases were dealt with conclusively although no specific details were given.

4.36 **DEFILEMENT:** 34 cases were recorded out of which only 6 were dealt with. No other details were given.

4.37 **INDECENT ASSAULT:** There were 80 cases recorded, out which only 4 cases have been dealt with, with no specific details.

Lindi District Court

44.38 **RAPE:** There were 4 cases, out of which 3 obtained conviction while the remaining case was pending in court. The sentences meted out were 2 years and 12 strokes, 5 years and 10 strokes, 5 years and 12 strokes: The ages of the accused persons were between 20 and 28 years.

4.39 **DEFILEMENT:** There were 5 cases recorded, out of which 4 earned a conviction and the remaining one involving an accused aged 76 years, was withdrawn under Section 98 of the Criminal Procedure Act, 1985. The sentences meted out ranged between 6 and 30 years imprisonment with 12 strokes. One of the accused convicted, who was aged 60 years, was sentenced to 6 years imprisonment together with 12 strokes.

4.40 **INDECENT ASSAULT:** There were 2 cases recorded out of which 1 accused was convicted and sentenced to 3 years imprisonment, while the other case was withdrawn under Section 98 of the Criminal Procedure Act. Ages of the accused were not stated and no particulars of age of the victims were recorded.

Liwale District Court

4.41 **RAPE:** There were 2 cases recorded and both cases earned a conviction. The accused were sentenced to five years imprisonment each. Their ages were not stated nor those of the victims.

4.42 **DEFILEMENT:** Only one case was recorded and the same was withdrawn under Section 98 of the CriminaI Procedure Act. No particulars of both the accused and the victim were recorded.

Nachingwea District Court:

4.43 **RAPE:** Three cases were recorded out of which two were withdrawn. The remaining case earned a conviction with a four year sentence of imprisonment. The convict was eighteen years old and no particulars of the victims ages were given.

4.44 **DEFILMENT:** There were five cases recorded and all ended up with a conviction. Sentences meted out were 20 years, 8 years imprisonment and 8 strokes. Ages of the accused ranged between 21 and 28 years.

4.45 **INDECENT ASSAULT:** Only two cases were recorded and in both cases the accused were convicted and sentenced to 2 and 3 years imprisonment. Ages of the accused persons were not stated nor the particulars of the victims.

Newala District Court

4.46 **RAPE:** There were only two cases recorded out of which one was withdrawn under Section 98 of the Criminal Procedure Act and the other earned a conviction. The accused was sentenced to five years imprisonment. No details of the victims ages were recorded.

4.47 **DEFILEMENT:** There were two cases involving four accused persons both cases earned an acquittal. The ages of the accused persons were between 20 and 40 years.

Masasi District Court

4.48 **RAPE:** There were 8 cases out of which 4 cases were withdrawn under Section 98 of the Criminal Procedure Act. In 2 cases the accused were discharged under Section 225(5) of the Criminal Procedure Act. The remaining two cases earned a conviction whereat the sentences meted out were a fine of 5,000/= in one case and five years imprisonment in the other. The accused were aged between 21 and 29 years.

4.49 **ATTEMPTED RAPE:** There were two cases of attempted rape recorded out of which one case earned a conviction and a sentence of 10 months imprisonment was imposed. The accused was 18 years old. The other case was still pending at the material time.

4.50 **DEFILEMENT:** There were 12 cases recorded out of which 11 cases ended with a conviction. The sentences meted out ranged from 18 months to 20 years imprisonment. The ages of the accused were between 17 and 35 years. The remaining case was withdrawn under Section 98 of the Criminal Procedure Act.

4.51 **INDECENT ASSAULT:** There were 12 cases recorded out of which 6 cases earned conviction. 1 case was withdrawn and 2 cases were withdrawn under SS. 98 and 225(5) of the Criminal Procedure Act respectively, while 1 case was still pending. The Sentences meted out were five years imprisonment and 9 months. No particulars of the victims ages were recorded.

4.52 **ABDUCTION:** There were three cases recorded out of which one earned a conviction and the accused was sentenced to pay a fine of Shs 3,000/= or 6 months imprisonment in default. The other two cases were dealt with under Sections 225(5) and 98 of the Criminal Procedure Act respectively. Neither the ages of the accused nor those of the victims were recorded.

Tabora High Court Centre

This Centre covers Tabora, Shinyanga and Kigoma Regions. The research carried out indicates that discussions with Women Groups in Tabora and Kigoma Regions were conducted on domestic violence and sexual offences.

Tabora Region:

4.53 **RAPE:** There were 12 cases of rape recorded there were 7 convictions out of the 12 cases of rape with sentences ranging from 6 strokes to 20 years of imprisonment. The ages of the accused persons were between 15 and 37 years. Three cases earned an acquittal while one case was pending at the time of the research.

4.54 **DEFILEMENT:** There were 13 cases of defilement recorded, out of which 9 cases obtained a conviction; two cases were withdrawn under section 98(a)of the Criminal Procedure Act, while two cases earned an acquittal. The sentences meted out ranged from 6 strokes to 20 years imprisonment. The ages of the accused were between 15 and 50 years.

4.55 **INDECENT ASSAULT:** One case on indecent assault was recorded whereas the accused was acquitted.

4.56 **ABDUCTION:** Three cases on abduction were recorded out of which on case was dealt with under section 98(a) of the Criminal Procedure Act, one case earned an acquittal and the third one was still pending. The ages of the accused were not recorded, so was the case with the ages of the victims.

Kigoma Region:

4.57 **RAPE:** There were 36 cases on rape recorded out of which 8 earned convictions whereat sentences meted out were between 15 strokes and 1 - 15 years imprisonment. Sixteen cases were withdrawn either under Section 98 or 225 of the Criminal Procedure Act. Six cases were tried and ended in acquittal while two cases were pending at the time of the research.

4.58 **ATTEMPTED RAPE:** There were five cases of attempted rape recorded, out of which three were withdrawn and one obtained an acquittal. The remaining case earned a conviction with a sentence of 2 years imprisonment. The age of the accused was recorded a 27 years. No particulars of the age of the other accused were recorded. Equally the victims ages were not recorded.

4.59 **DEFILEMENT:** There were 14 cases of defilement recorded, out of which 6 ended up with convictions. Five cases were withdrawn, two cases ended up with an acquittal while the remaining case was still pending. The ages of the accused persons ranged from 13 - 64 years. The accused aged 64 years was sentenced to 20 years imprisonment

4.60 **INDECENT ASSAULT:** There were only two cases on indecent assault recorded, out of which one case ended up with a conviction while the other one was withdrawn.

4.61 **UNNATURAL OFFENCES:** There were five cases of unnatural offences recorded, out of which 2 were withdrawn, while the remaining three cases ended up with a conviction. Notably one among the three convicted accused persons was aged 13 years.

4.62 **KIDNAPPING:** There was only one case of kidnapping recorded and the accused was acquitted at the trial.

4.63 **ABDUCTION:** There were two cases of abduction recorded and both were withdrawn. No reason has been recorded for the withdrawal.

Mbeya High Court Zonal Centre

Mbeya Region:

4.64 The Mbeya High Court Zonal Centre caters for Mbeya, Iringa and Rukwa Regions.

4.65 At the High Court Zonal Centre in Mbeya the Criminal Returns from Resident Magistrate and District Courts of Mbeya, Chunya, lleje, Kyela, Mbozi and Tukuyu Districts were examined. From the records only the offences of rape, attempted rape, defilement, attempted defilement, abduction and indecent assault were reported:

4.66 **RAPE:** There were a total of 94 rape cases on record in the Courts of Mbeya Region, out of which 42 obtained conviction and 15 acquittals. 31 cases were withdrawn, A discharged under Section 225(5) of the Criminal Procedure Act, 1985, while 2 were pending in Court. The ages of the accused ranged from 13 to 58 years. The sentences meted out were of between 6 and 12 strokes, conditional discharge, fines from Shs.2,000/= to shs. 8,000/=, and imprisonment terms of between 2 and 5 years. In one case however, the accused was convicted in absentia and his sentence reserved until his arrest. There were no particulars of the victims ages on record.

4. 67 **ATTEMPTED RAPE:** There were 3 cases of attempted rape, all of them were ultimately withdrawn. Only the age of one accused person was given to be 34 years. The particulars of the victims were not given.

4.68 **DEFILEMENT:** There were 42 cases of defilement out of which 21 obtained conviction and 5 acquittal. While 8 cases were withdraw in 5 cases the accused were discharged under Section 225(5) of the Criminal Procedure Act, 1985, and the remaining 3 were still pending in Court including one involving a 65 year old. The sentences given by the Court were conditional discharge for an accused aged 15 years, and imprisonment of between 4 months and 20 years for the rest. The ages of the accused were between 15 and 70 years. There were no particulars of the ages of the victims. Criminal Procedure Act, 1985. The sentences awarded were 6 strokes and a fine of shs.8,000/=. The accused were aged between 14 and 50 years. No particulars of the victims ages were recorded.

4.69 **INDECENT ASSAULT:** There were 22 cases of indecent assault, out of which 10 obtained a conviction and 4 an acquittal. 6 cases were withdrawn while in 2 cases the accused were discharged under Section 225(5) of the Criminal Procedure Act, 1985. The sentences given varied between fines of Shs.10,000/= to Shs.12,000/= and imprisonment terms of 6 months to 20 years. The ages of the accused were between 20 and 60 years. There were no particulars of the victims ages. The reason given for the acquittals and withdrawals of cases in Courts in Mbeya Region is insufficience of evidence especially corroborative evidence

Iringa Region:

4.70 Examination of Criminal Returns in the Mbeya High Court Zonal Centre from Resident Magistrate s and District Courts in the Districts of Iringa, Ludewa, Mufindi and Njombe revealed that only the offences of rape, attempted rape, defilement, abduction and indecent assault were reported.

4.71 **RAPE:** There were 55 cases of rape recorded, out of which 23 obtained a conviction and 14 an acquittal. At the same time 15 cases were withdrawn and 2 cases discharged under Section 225(5) of the Criminal Procedure Act, 1985. One case was still pending in Court.

4.72 **ATTEMPTED RAPE:** There was only one case of attempted rape in which the accused was convicted of common assault and fined Shs. 5,000/=. No further particulars were recorded in respect of the accused or the victim.

4.73 **DEFILEMENT:** There were 34 cases of defilement on record in 27 cases the accused were convicted while in 1 case the accused was acquitted. 4 cases were dismissed while in 1 the accused were discharged under Section 225(5) of the Criminal Procedure Act, 1985. The sentences meted out varied from 5 to 12 strokes for the accused under 16 years of age, to meted out ranged between 7 months and 15 years imprisonment. The ages of the accused were between 15 and 40 years. The records do not show particulars of the victims ages on record.

4.74 **ABDUCTION:** Three cases were recorded for abduction out of which one obtained a conviction, one was dismissed and the other one was withdrawn under Section 225(5) of the Criminal Procedure Act, 1985. The accused were aged 20 and 28 years. The sentence meted out was 20 years imprisonment. There were no particulars of the victims ages.

4.75 **INDECENT ASSAULT:** There were 7 filed cases of indecent assault. Two cases earned a conviction and 3 an acquittal. The remaining two were withdrawn under section 98 and 225(5) of the Criminal Procedure Act, 1985. The returns did not reveal any particulars of the victims ages. The reasons recorded for the acquittal, withdrawal and dismissal of cases were lack of sufficient evidence, complainants not interested with the case, credibility of the complainant questioned, lack of corroboration and doubtful identification of the culprit.

Rukwa Region:

4.76 The Criminal Returns of Resident Magistrates and District Courts in the Districts of Sumbawanga, Mpanda and Nkasi were scrutinized at the Mbeya High Court Zonal Centre. The record revealed statistics for the offences of rape, defilement, abduction and indecent assault.

4.77 **RAPE:** Sixteen cases of rape were recorded, out of which 8 obtained a conviction and 1 an acquittal. There were 7 withdrawals. The sentences meted out ranged between 2 and 8 years imprisonment while the ages of the accused were spread between 15 and 60 years.

4.78 **DEFILEMENT:** There were 6 cases of defilement, out of which 4 obtained a conviction and the rest were withdrawn. The sentences meted out ranged from 5 to 20 years imprisonment, the highest term being handed down to a 68 years old. The ages of the accused varied from 18 to 68 years. No particulars were on record in respect of the victims ages.

4.79 **ABDUCTION:** Criminal Returns showed that there were 4 cases of abduction, out of which 2 obtained an acquittal,1 was withdrawn under section 98 and the other under Section 225(5)of Criminal Procedure Act, 1985. The ages of the accused were not recorded. Neither were there any particulars of the victims ages.

4.80 **INDECENT ASSAULTS:** There were three cases of indecent assault. All the cases were withdrawn and no reasons were given. Only the ages of the two accused in one of the cases were recorded to be 15 and 16 years.

REPORTS FROM SELECTED PRIMARY COURTS

4.81 A second phase research was conducted to cover records in the Primary Courts in selected areas in the country. From the available information it is apparent that domestic violence is rampant in our community both in urban and rural areas.

4.82 Findings from the records in the Primary Courts indicate that the prevalent cases on domestic violence are on battery and or assault. However, the majority of cases filed are either withdrawn or dismissed by the Courts on the following reasons;

- Æ fear of breakdown of marriages, family ties once the husbands are imprisoned;
- Æ fear of revenge by the husband s family/relatives;
- Æ lack or little confidence on the part of the complainants to lead evidence in public;
- Æ social stigma on their character and standing in the community;
- Æ lack of evidence, medical and otherwise. Further data collected show the following offences were tried by Primary Courts:

4.83 **ABDUCTION:** A total of 10 cases were recorded to have been filed in the Primary Courts. Out of these cases only two obtained a conviction. In the other case the convicted culprit was sentenced to six months imprisonment. Four cases were withdrawn/dismissed under sections 24, 22(1) and 31 of Third Schedule of Act 2/ 1984 (PCCPC)[45]

4.84 **INDECENT ASSAULT:** A total of 40 cases on indecent assault were recorded out of which 10 cases ended up with a conviction. Sentences meted out were 1 months imprisonment, 12 months and a fine of 5,000/= or six months imprisonment in default. The remaining cases were withdrawn.

4.85 **ASSAULT:** A total of 292 cases on assault on women by men were recorded in the Urban Primary Courts in Mwanza, Mara and Kagera Regions. The records show that the majority of the cases were withdrawn, while the few cases which ended up with a conviction, the sentences meted out were: four strokes together with compensation of 3,000/= fines ranging between 1,000/= - 2,000/= and imprisonment of 6 - 12 months.

4.86 **ABUSIVE LANGUAGE:** Research revealed that the abusive language against women in Mara, Mwanza and Kagera regions are rampant. There were 40 cases on the use of abusive language. Out of these 40 cases only 3 cases ended up with conviction with sentences of 4 months and 6 months imprisonment. The rest of the cases were withdrawn under Sections 24 and 32 of the 3rd Schedule of Act No.2/1984 Magistrate s Courts Act.

WOMEN ECONOMIC GROUPS

Tanga Region:

4.87 Four Women Groups with a total membership of 61 were visited and interviewed. From the interview the following information was obtained:

(a) Seven women confirmed not to have been beaten by their spouses.

(b) Some women confirmed the existence of domestic violence caused by various reasons, such as irresponsible attitudes to family matters by husbands, adultery, etc.

(c) Others reported to be happily married and advocated for spouses to live in harmony. However, there was an exceptional incident of a woman battering and injuring her husband because he had committed adultery. The husband did not take the matter to the Police.

(d) The Ages of the Women ranged between 25 - 55 years.

Mbeya Region:

The researcher met a total of 131 women in groups in Mbeya, lleje, Kyela, Mbozi and Tukuyu Districts, 116 were interviewed. They confirmed the prevalence of domestic violence and attributed it to stubborn and quarrel some men who resorted to violence when questioned by their wives about their conduct for example, of drunkardness, adultery, spending nights outside the matrimonial home without good cause, not providing the family with financial or material support selling all the farm produce and pocketing all the proceeds without consulting the wife or not providing for the welfare of the family.

4.88 The women condemned specifically drunkard men whom they blamed for battering their wives sometimes on flimsy or no reasonable grounds at all, like when a wife is late to open a door to the husband who returns home drunk in the early hours of the morning. They stated that such conduct was the cause of disharmony and breakdown of many families.

REGIONAL VISITS:

4.89 Six teams from the Commission started their visits in November 1997 to different regions i.e. Arusha Dodoma, Iringa,Kigoma, Kagera, Kilimanjaro, Lindi, Mara, Morogoro, Mwanza, Mtwara; Rukwa, Singida, Shenyanga, Tabora and Tanga. Research findings from all the places visited reveal views advocated by the participants who attended the meetings on the following issues:

1. Whether the current punishment for rape and defilement was adequate, and if not what should it be.

2. Should the law have a minimum punishment for most sexual offences and domestic violence as it has for defilement?

3. Is it still desirable to continue with the requirement of corroboration in rape and defilement cases or should the law specifically provide that the evidence of the complainant should be weighed on its own merits, like courts do in other cases?

4. Whether the law should expressly provide that where a person has been found guilty of rape or defilement then compensation for the victim should be compulsory.

5. How should domestic violence be dealt with, should it be taken to court or should such cases be sent for reconciliation on community based Organs such as Ward Tribunals, family members, Community elders and the like.

6. Should the sentencing powers of primary, district and resident magistrate s courts be enhanced in such cases as rape, defilement and domestic violence?

7. How should courts deal with sexual offences and domestic violence?

8. How should the police investigate, receive complaints and treat complaints of rape, defilement other sexual offences and domestic violence cases?

9. The role of the community in such cases.

REASONS/CAUSES OF THE OFFENCES:

4.90 In all regions visited, most of the participants deplored the increase in sexual offences particularly rape and defilement. Apart from considering what punishment should be meted out it was suggested that research should be conducted to find out what the causes for these offences were and why they were on the increase. The following are some of the causes or reasons advanced:

- the increase on the abuse of drugs, bhang smoking and unemployment;
- rate of deterioration of social norms and values;
- the emergence of a liberal press which prints obscene matters which are against our culture with no action being taken against them
- public campaigns for the use of condoms;
- unrestricted use of alcohol;
- the scare of AIDS victims lead many adults resort to children for sex to escape HIV/AIDS;
- Use of TVS and VIDEOS by children;

- Inability of the police to deal effectively with bhang smokers and drug users and pushers;
- Under age marriages (especially in Tanga, Lindi and Mtwara regions);
- Indecent dresses worn by girls and women; uncontrolled migration (movement) of people from rural areas to urban areas and vice versa;
- uncensored TV s and Video programmes particularly those on pornography;
- high degree of indiscipline especially among the youth;
- importation of foreign cultures through tourism;
- difficult living conditions brought by economic hardship;
- child labour - direct as well as indirect labour such as youths deployed in petty and itinerant business/trade;
- witchcraft belief and superstition;
- population (explosion) increase vis- -vis available services/ facilities;
- courts indifference
- disregard of religious teachings guidance and directives;
- disregard of good cultural values and practices i.e. JANDO NA UNYAGO;
- laxity, leniency in enforcement of existing laws;
- uncontrolled/uncensored mass media;
- parental abdication of their duty of their children s up-bringing.

RECOMMENDATIONS ON HOW TO DEAL WITH THESE OFFENCES:

4.91 In all regions visited, recommendations were given on how to deal with these problems as hereunder:

On the role of police:

4.92 On this aspect the following recommendations were advanced:

- a special procedure to be introduced within the police force to deal with cases of violence against women and children;
- victims of sexual offences and violence be dealt with (e.g. taking statements; etc), in camera in order to protect them from further humiliation;
- there should be special police officers and investigators to deal with such cases as defilement, rape, and domestic violence;

- within police stations there should be special units assigned to deal with such cases in a manner that would ensure that complainants are treated with dignity;

- there should be a special desk at police stations to ensure that complaints are heard in privacy and with dignity. It was also suggested that such cases should be dealt with by senior police officers to ensure responsibility and speedy handling of such cases;

- Many participants recommended that sexual offences and offences of violence against women and children be handled in a different manner and not just like other offences;

- Police should train some officers to deal with these problems.

On the role of courts:

4.93 In all regions visited the following were advanced by participants: the recommendations:-

- all sexual offences and cases of violence against women and children should be determined in Camera but in some areas participants strongly felt that such cases should continue to be heard in open courts;

- sexual offences and cases of violence against women and children should receive special priority in the courts of law. This will reduce delays in trying such cases;

- there should be specialized magistrates to handle such cases, more particularly in those places where cases of this nature are rampant;

- with respect to the jurisdiction of courts, the lowest courts (i.e. Primary courts) should be given jurisdiction to deal with all cases of violence against women and children because they are the ones that are close to the people (especially in rural areas);

- as unnecessary delays of cases tend to affect victims, measures should be taken to avoid them;

- sentencing powers of courts should be enhanced;

- all cases of the nature under discussion should also be heard by women if possible;

- creation of centers for counseling of victims and creation of rehabilitation centres for offenders;

- confinement in collective centres for purposes of making the culprits productive.

On Sentences:

4.94 The following views were advanced:

- that there should be minimum sentences for sexual offences. It was emphasized that such minimum sentences should reflect the gravity of the offences;
- sentencing powers of subordinate courts should be increased to reflect severity of punishment provided by law;
- the current punishment for the offence under consideration is inadequate;
- in most of the places visited, many participants suggested the increase of minimum sentence for the said offences to be 20 — 30 years imprisonment. It was also suggested in other places that minimum sentence to be 10 - 20 years for rape while other places it was recommended 45-50 years to death sentence for defilement;
- life sentence or death to whoever defiles a child was also recommended as a minimum and addition of 5 - 20 strokes of the can per week to be administered in public to the rapist or defiler;
- in many places, castration, and ostracization was recommended to the offender with emphasis of death sentence to the offender found with HIV/AIDS.

Role of the Law:

4.95 On this aspect, the following recommendations were advanced:

- there should be compulsory and immediate compensation to victims of rape, defilement, and domestic violence;
- the two offences, rape and defilement, should not be bailable;
- medical evidence if available should be accorded sufficient weight in determining the guilt of the accused. If unavailable, circumstantial evidence should suffice;
- the offence of defilement should cover girls of up to 18 years, which is considered in law as the age of majority;
- the requirement for corroborations should be removed, evidence to be admitted or rejected on the basis of the credibility of the complainant.
- advocates should be allowed to appear even in primary courts because that is where the law is normally misapplied and where corruption is rampant;
- a case for domestic violence that does not cause injury should be dealt with by Ward Tribunals but if it is serious the matter should be taken to court and that there should be a minimum of five years imprisonment;

- the evidence of defiled girls should be sufficient provided they can identify the culprit;

- witch doctors should be legally dealt with; because children of tender age defiled by culprits who are directed by witch-doctors to do so either to get wealth or to preserve wealth already acquired;

- convicts of rape and defilement should not be eligible for clemency and there should be no remission on their sentences;

- the law should be amended to provide for imprisonment to culprits who appear to be about 18 years instead of only being sentenced to corporal punishment;

- review of the labour laws especially the Human Resources Deployment law regulate and guide labour market/job creation;

- rules and regulations restricting children in public places be enforced/adhered to;

- reformed law to be gender balanced.

Role of the Community:

4.96 The following views were advanced as the role of the Community in dealing with these offences:

- the community should be sensitized to encourage women to report the cases of sexual offences and battery to appropriate legal organs;

- there should be no encouragement for reconciliation but all cases should end up in court except for cases involving spouses;

- education to enable women at grassroots level should be given on human rights and protection of personal integrity, liberty and dignity for women and girls;

- appropriate organs of the Government should analyze all the customary laws which suppress, bully and degrade women and take away their human rights and suggested remedy to remove those which work against women;

- men should know they have a duty and obligation to change their attitude, they should cast away their male chauvinism to join the struggle to emancipate themselves;

- religious leadership should play a more active role in sensitizing members of the, community with regard to norms, ethics and values of the community;

- parents to take effective role in positive up-bringing of their children;

- Government machinery to effectively supervise and control the business of liquor i.e. adherence of selling hours, premises and the clientele;

- parents should be made accountable and liable in law for their failure and or neglect in respect of their children;

- the issue of contributory behavior on the part of women should not be ignored e.g. sexy dressing pattern;

- the need for public education was underscored especially in the field of law and Human Rights;

- specific programmes be initiated and legal education in Primary School Curriculum be introduced;

- society as a whole should own this problem;

- Government action on:
    - unlicensed video shows
    - unlicensed liquor drinking and drinking places
    - unlicensed business undertakings;

- reporting system especially in rural areas(villages) be streamlined/ simplified.

CHAPTER V

RECOMMENDATIONS

5.0 Research has revealed that Criminal law in Tanzania Mainland, though intended to protect the dignity, integrity and liberty of women, by providing heavy penalties for such offences, has not been effectively applied to achieve the intended objectives. This ineffectiveness is reflected by:

I. The lenient sentences imposed by subordinate courts on convicts of such offences, partly due to lack of appreciation of the gravity and nature of the offence and partly due to the inadequacy of the law.

II. The strict application of the requirement of corroboration on evidence given by the victim where the victim turns out to be the only eye witness,

III. Lack of due regard to and assessment of the credibility of the victim s evidence as is the case in other offences,

IV. Courts restrictive construction of acts done towards the commission of rape, on the basis of the doctrine of proximate and last act contrary to the clear provisions of the Penal Code,

V. The failure of courts to award compensation in cases involving sexual offences, and

VI. The strict requirement that a victim of a sexual offence to testify in an open court, a factor which tends to inhibit the victim from being an effective witness. In view of the foregoing, we believe that reform is necessary so as to make our Criminal law a true vehicle for the protection of the integrity, dignity and liberty of women in Tanzania. The recommendations are divided into two categories, Legal and Social reform recommendations.

LEGAL REFORM RECOMMENDATIONS

I NEW LEGISLATION:

5.1 The Commission recommends that new legislation should be made to cover the following areas:-

(i) Prohibition of reconciliation in cases of sexual offences in the light of the recommended mandatory compensation. All cases must end in court except in cases of wife battering which has not occasioned grievous harm. In the latter case, reconciliation be allowed to try to restore harmony and maintain the fabric of the family.

(ii) Female genital mutilation should be prohibited. Convicts should be jailed for a minimum of 30 years and victims compensated.

(iii) In some tribes women marry other women and keep them in bondage akin to slavery, this must be prohibited. Convicts should face a minimum jail sentence of 5 years.

II SENTENCING

5.2 Since subordinate courts have consistently been imposing inadequate sentences for perpetrators of such offences as rape, attempted rape, defilement and kindred offences, the following measures should be taken so that 132 sentences meted out to convicts are commensurate with the gravity of the offences:

(i) The jurisdiction of subordinate courts to try cases of sexual offences be retained.

(ii) The law should be amended so as to provide for minimum sentences for all sexual offences, except indecent assault. In any case the sentences should not exceed what is currently provided by law.

(iii) The Criminal Procedure Act, 1985 should be amended so as not to limit the High Court, when exercising its revisional powers, to impose a higher sentence than that which may be imposed by a subordinate court. The only limitation should be the maximum penalty that could be imposed for the offence under the relevant provisions of the law.

III CORROBORATION

5.3 Corroboration is not a rule of law in Tanzania. It is merely a requirement of practice cultivated out of prudence. The High Court has held two divergent views on the issue of corroboration. On the one hand the court has treated corroboration as a strict requirement for conviction in sexual offences, while on the other, it has ignored its necessity. The Court of Appeal has not yet made its stand on this issue. Ipso facto the Commission recommend that:-

> The law should state unequivocally that corroboration is not a strict requirement for conviction in sexual offences. Lack of corroboration should not result in automatic acquittal of the accused in such offences; rather the courts should be required to assess the credibility of the evidence of the victim as a lone witness, on its own merit, as they do in respect of other offences.

IV COURT PROCEDURE

5.4 As a general rule, all criminal proceedings must be conducted in an open court. This is to ensure that justice is not only done, but is also seen to be done. Research has-revealed equally strong contending views on whether the prosecution of sexual offences should be conducted in an, open court or in camera. There are those who argue that conducting sexual offence cases in an open court inhibit the victim from being an

effective witness. They speak of the victim being humiliated, or raped in public , as it were. But there are those who insist on a public hearing and they state that the hearing will not only have a deterrent effect on the general public, but it will also be transparent and remove the doubts/fears that a hearing in camera may attract the element of corruption. As for cases involving children, both sides agree that these should be heard in camera. The Commission recommends that the Criminal Procedure Act 1985 be amended appropriately so as to state;

(i) All sexual offence cases, involving children must be heard in camera.

(ii) Adult victims in sexual offences be given a choice to have their evidence (cases) heard in either camera or in public.

(iii) Rape and defilement should not be bailable offences

(iv) The court should control the defence from asking the victim questions on her past private life not directly connected with the offence in issue.

(v) The particulars of victims of sexual offences must be set out sufficiently in case of that nature so that all the necessary assistance such as compensation, counseling and rehabilitation can be made available to them.

V COMPENSATION

5.5 Sexual offences normally result in physical and mental injury. The victim is injured for no fault of hers. This situation needs a redress and compensation is ideal and called for.

The Commission recommends that:

(i) The Criminal Procedure Act 1985 be amended to provide for a minimum and mandatory compensation order to adequately cover the extent of damage caused to the victim.

(ii) The government should pay adequate compensation to the victim and then recover the same from the convict.

(iii) If the rape victim is infected with the my HIV-AIDS, then the convict must be sentenced to death.

(iv) Since the victim of a sexual offence may not be able to recover anything or adequate compensation from the convict due to a variety of reasons, the Government should establish and maintain a special fund from which victims of sexual offences can be paid compensation as ordered by Courts.

(v) The government should then recover from the convict if possible an equivalent amount of money as the sum paid out as compensation.

SOCIAL REFORM RECOMMENDATIONS

5.6 Since the increase of crime, and sexual Crimes in particular, has a strong bearing on what is happening in society, it is important to suggest what measures the Government and the community in general should take to tackle the problem. The Commission makes the following recommendations in this respect.

THE ROLE OF THE GOVERNMENT

(i) The Government should adopt measures to ensure that women subjected to violence sexual or otherwise, and where appropriate their children, should have specialized assistance such as rehabilitation, assistance in child care, maintenance, treatment and counseling.

(ii) The Government should encourage and assist NGOs such as the Legal Aid committee of the Faculty of Law of the University of Dar es Salaam, The Tanganyika Law Society, TAWLA, SUWATA, Committee on violence against women under TAMWA, to work out elaborate and effective programs III specialized assistance.

(ii) The Government should encourage and assist pressure groups such as the Medical Women s Association and Umoja wa Malezi Bora Tanzania (UMATI), to formulate viable programmes aimed at giving specialized assistance maintenance, treatment and counseling to women and where appropriate, children of women subjected to violence.

(iv) The Government should control the mass media, so that pornography and like activities are not allowed in the Media.

(iv) The Government at both the local and national levels should take severe punitive action on, unlicensed video shows, unlicensed liquor drinking, and all unlicensed businesses such as gambling, prostitution etc. It should further do all in its power to curb the importation and sale of pornographic videos and materials.

(v) The Police should be sensitized so that they acquire a positive attitude and treat with dignity, victims of sexual offences. This should be through their basic as well as informal training.

(vii) The Government should fight against laxity in enforcement of laws.

(viii) The Government should create centres for counselling of victims as well as centres for the rehabilitation of offenders.

(ix) The Government should introduce some basic aspects of legal education related to human rights in the school curriculum in Primary and Secondary Schools.

II THE ROLE OF THE COMMUNITY

(i) The community should be sensitized to encourage women to report cases of sexual offences and battery to appropriate authorities.

(ii) Religious leadership should play a more active role in sensitizing members of the community with regard to norms, ethics and values of the society.

(iii) Parents should play a more effective role in the positive up-bringing of their children.

(iv) The Community should ostracise and reject witch-doctors who through their prescriptions direct people to commit crimes, sexual or otherwise. People should be encouraged to report these witchdoctors to Government authorities.

(v) Community should scoff at indecent dresses worn by women.

(vi) Community should unite against child labour.

(vii) there is a need to have in place continuous education of members of the Bench to ensure that their decisions are made in line with the tempo and aspirations of the community at any given time.

FOOT NOTES

1. - Nyerere: Freedom and Unity; P. 139
2. -Mbilinyi: Women in Tanzania: Analytical Philosophy
3. - Ruth Meena: Education in Tanzania with Gender Perspective.
4. - Penal Code (Cap.16) and the Criminal Procedure Act, No.9 of 1985.
5. - Sauti ya Siti: A Tanzania Women s Magazine published by TAMWA
6. - ibid P. 4
7. - A Tanzania Women s Magazine published by TAMWA; Page 5.
8. - The Sexual Offences Special Provisions Act, No.4 of 1998 was enacted and came into effect on 1/7/98 while this study was in progress.
9. -SS. 130 and 131 of Penal Code, op. cit.
10. - S. 132 of Penal Code op. cit.
11. - S. 136 (1). Penal Code, op. cit.

12. - S. 135 (1), Penal Code, op. cit.

13. - S. 133&134, Penal Code, op. Cit.

14. -(Vide) Situation Analysis of Violence Against Women and Children in Tanzania. A paper presented in a Workshop on the Mechanism to Protect and Promote the Human Rights of Women by Tanzania Media Women s Association-(TAMWA).

I5. -Ibid. The writer being an African himself, indeed Tanzanian pities women in Tanzania in particular and women in the world in general because in Tanzania customs still govern the life of Tanzania people. In the tribe and in particular the clan from which the writer of this paper comes from, it is a taboo for the members of the clan to take one another before the courts of law.

16. -S. I68(3)(a)(ii) of the Crim. Procedure Act op. Cit.

I7.- **RAPE: REFORM OF LAW AND PROCEDURE-APPENDIXES TO INTERIM REPORT NO. 42, pg. 156.**

I8. -G. Sullivan, in Rape Crisis Handbook: Counselling for sexual Abuse
Wellington Rape Crisis Centre, New Zealand 1986,P .21, quoted at pg. 157 of the RAPE: Refonn of the Law and Procedure. Appendixes to Interim Report No. 42 op. cit.

19. -Cap 526 of the Revised Laws of Tanzania.

20. -ActNo. 1 of1972
21. -Economic Sabotage (Special Provisions) Act No.9 of 1983, and amendment Act No.1 0 of 1983.

22. - Established under S.5 of the Act, op. cit.

23. -ActNo.14 of 1984.

24. - Amendment Act No. 12 of 1987.

25. -AmendmentActNo. 10 of 1989

26. - S.3(2) of the Act op. cit.

27. -First Schedule to the Act, lop. cit.

28. -S. 12(3) of the Economic and Organized Crimes control Act 1989 op. cit.

29. -S. 5(b)(bb) of the M.S.A. 1972 as amended by Written Laws (Misc. Amendments) Act No. 10 0f 1989.

30. -Crim. Rev. No.7 of 1989, (High Court Registry, Mbeya, unreported).

31. -Crim. Rev. No.2 of 1989, (High Court Registry, Mbeya, unreported).

32. -S.366(3) of the Crim. Proc. Act 1985 op. cit. provides:
Nothing in this section shall be construed as precluding the court from inflicting a greater punishment than the punishment which might have been inflicted by the court which imposed the sentence.

33. -S.373(3) of C.P.A. 1983, op.cit provides:
Where the sentence dealt with under this section has been passed by a subordinate court the High Court shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has Committed, than might have been inflicted by the court which imposed the sentence:

34. -NOTE: ACT No. 19 OF 1992 has amended section 36 by adding immediately after: subsection (3) the following provision: (4)Where any person is convicted by a court of an offence under this section, the court shall sentence such person to a term of imprisonment which shall not be less than twenty years.

35. -S.168(3)(a)(I) of the C.P.A. 1985 op. cit.

36. -S.127 of Evidence Act 1967 as amended by; Subsection (3); Notwithstanding any rule of law or practice to the contrary, where evidence received by virtue of Subs. (2) is given on behalf of the prosecution and is not Corroborated by any other material evidence in support of it implicating the Court may, after warning itself of the danger of doing so, act on that evidence to convict the accused if it is fully satisfied that the child is telling nothing but the truth.

37. -(1855) Dears. 515; 169 E.R. 826 See also ELLIOT AND WOOD: A Casebook on Criminal Law Sweet and Maxwell, London, 1963Y.l85-6:

38. -See also ELLIOT AND WOOD, op. cit. P 192-3

39. -Criminal Law: the General Part: 2nd ed: by Glanville Williams, 1961. See also ELLIOT AND WOOD op. cit. P.193-5

40. -Northem Region, Nigeria Law Report.

41. -See also LAW IN AFRICA NO. 21:a Source Book of the Criminal Law of Africa-cases, Statutes and Materials. By ROBERT B. SEIDMAN, LONDON; SWEET AND MAXWELL; LAGOS: Arica Universities Press. 1966 pg. 587-90

42. -S. 380, Penal Code, op. cit

43. -RAPE: Reform of Law and Procedure-Appendixes to Interim Report No. 42, July 1991, p.151.By Law Reform Commission of Victoria. (The Commonwealth of Australia).

44. -UN-General Assembly Resolution No. 40/34 of August 1986.

45. -Primary Court Criminal Procedure Code.

EPILOGUE

The preceding report has endeavoured to put in perspective the issue of the protection of the right to personal integrity, dignity and liberty of women. It was expected that after the report on the Criminal Law as a vehicle for the Protection of the Right to Personal Integrity, Dignity and Liberty of Women was concluded and submitted to the Minister of Justice and Constitutional Affairs, the government would initiate legislation for the purpose of implementing the Report. However, in view of the sensitive and important nature of the subject, the government did not wait for the report and instead it used the Discussion Paper of the Law Reform Commission and other sources to enact the Sexual Offences Special Provisions Act,1998.

The Commission has noted that some preliminary recommendations contained in the Discussion Paper of this Study were adopted in the enactment of the Act. That notwithstanding, the Commission has examined the Act and observed that some aspects have not been properly set out. In this Epilogue therefore, the Commission attempts to highlight those matters and proposes how the Act could be improved. Consequently, the following are the views of the Commission on the Act:

The Commission finds the definition of sexual intercourse in section 3 of the Act to be too wide as it includes unnatural offences which are otherwise adequately covered in section 154 of the Penal Code. To include unnatural offences in the definition of sexual intercourse is tantamount to an attempt to decriminalize bestiality.

The Commission notes that Section 130(2) (e) of the Penal Code as amended puts the mariageable age of not less than fifteen years. However, Section 13(2) of the Law of Marriage Act, 1971 puts the marriageable age at fourteen years once leave of the Court to marry has been granted. The Commission therefore proposes that the section be amended to reflect this position.

The Commission has noted further that the age of a boy in section 131(2) of the Act is not in line with the general definition of boy . It is therefore recommended that the phrase in section 131 (2) should read by a boy under the age of eighteen years in line with the general definition of boy .

In addition, the Commission opines that the provisions of section 131 A (2) of the Penal Code as amended may offend the provisions of other laws especially the Children and Young Persons Ordinance, Cap.13 and Corporal Punishment Ordinance, Cap,17 since under this provision (s,131A(2)) a boy and a girl are liable also to be imprisoned for life like adults.

Section 9 of the Act repeals and replaces section 135 of the Penal Code, The present section carries two separate offences, that is, indecent assault and insulting the modesty of a woman which were covered by subsections (1) and (3) of the former section 135 of the Penal Code. The Commission is of the considered opinion that the proposed new section is badly drafted and lacks serious ingredients of a criminal nature. It is therefore recommended that section 9 of this Act be repealed and replaced by the former section 135 of the Penal Code.

Section 11 of the Act makes amendments to section 138 of the Penal Code by enhancing the punishment of offences in subsections (l), (2) and (3) to ten years. The Commission contends further that amendment of the section should be made by repealing section 138(1) of the Penal Code since what amounts to the offence of defilement by husband of wife has been covered by Section 130(2) (e) of the Act. In addition, whether or not the subsection is repealed, it is necessary to harmonize the age of the wife and the sentences provided for in section 138 with those provided for in Section 130(2)(e) of the Penal Code. The Commission therefore recommends that section 138(1)be repealed and the rest of the section be amended as suggested herein above.

Section 13 of the Act, repeals and replaces section 139 of the Penal code, Taking into account the despicable behaviour, where it would appear that even males are involved, the section is an improvement on the present section. The Commission opines that the ingredients enumerated are serious to warrant enhanced sentences which should carry only a mandatory minimum term of imprisonment as reflected in sections 29 & 30 of Sexual Offences Special Provisions Act,1998. The alternative sentence of a fine is superflous, irrelevant and inapplicable. Therefore the Commission recommends the repeal of the alternative sentence of a fine.

Section 14 of the Act introduces a new offence of trafficking of person by providing a new section 139A of the Penal Code. However, the Commission recommends that the definition of a child in subsection (2) should be amended to mean a person who is below the age of eighteen years or who has not attained the age of eighteen years in line with the definition of a boy or girl.

Section 15 of the Act repeals and replaces section 140 of the Penal Code. The Commission is of the view that the sentence provided is lenient since the ingredients in the section amount to aiding defilement and rape and therefore, fall squarely under section 22 of the Penal Code. The Commission recommends that the appropriate sentence should be that provided for rape under Section 131 of the Act.

The Commission has also considered the propriety of retaining sections 141,142 and 143 of the Penal Code in their present form. It is the opinion of the Commission that the perpetrators of the offences created by these sections belong to the same class of aiders and abettors of rape who under section 22 of the Penal Code should suffer the same consequences in all respects as a conviction of committing the offence .

Section 20 of the Act repeals and replaces Section 160 of the Penal Code. The sentence provided is ambiguous. It would appear that as a whole the minimum sentence is imprisonment for thirty years. If that is the case, there is no reason for having a proviso as it is. Moreover, in such cases the general trend is to have higher sentences for offences perpetrated on younger victims. The Commission therefore, recommends that the proviso be amended to raise the minimum sentence in the case of victims who are below the age of ten years. A minimum sentence of 30 years imprisonment is proposed.

In the course of its research and consultations the Commission is seized with two divergent views on the provision of conducting proceedings relating to sexual offences. There is need to consider seriously the two divergent views; ie: one which favours the in-camera rule and the other which advocates for the trial in open court for the sake of openness, transparency as well as to relive the established adage that JUSTICE SHOULD NOT ONL Y BE DONE BUT SHOULD ALSO BE SEEN TO BE DONE. The in- camera rule should apply strictly when dealing with trials involving children. The Commission however recommends that where the victim is an adult he/she should be given the choice whether his/her evidence be taken in-camera or in open Court. Section 24 of the Act should be amended to reflect this point of view.

The Commission takes note of the fact that the Sexual Offences Special Provisions Act, 1998 has addressed the disparities in the sentencing pattern observed in the Courts. Sections 12,22,23,26,29 and 30 are relevant. In addition the Commission has taken cognisance of the amendment of s, 170 of the Criminal Procedure Act, 1985 by s.23 of the Sexual Offences Special Provisions Act,1998.

The amendment limits the sentencing powers of the Subordinate Courts for scheduled offences whose minimum sentences are above five but below eight years. The Commission contends that Subordinate Courts be re-empowered to impose sentences of up to eight years imprisonment in scheduled offences whose minimum sentences are below eight years imprisonment.

CONCLUSION

The Commission in its Report has endeavoured to put in perspective the issue of protecting the right to personal integrity, dignity and liberty of women. The Report of the Commission contains various recommendations, which if considered in tandem with the views in this Epilogue could go along way to improve the legislative measures taken by both the Government and Parliament through the enactment of the Sexual Offences Special Provisions Act, 1998.

Statistics of Violence Against Women and Children in Tanzania 1990-1995 Appendix 'A'

	IDEFILEMENT							DOMESTIC VIOLENCE							SEXUAL HARASSMENT							INDECENT ASSAULTS							VIOLENCE AGAINST THE AGED RAPE						
MKOA	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**TOTAL**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**TOTAL**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**TOTAL**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**TOTAL**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**TOTAL**
ARUSHA	4	3	5	15	19	6	52	4	7	6	8	10	5	40				2			2								1	7	5	82	78	39	212
DSM	12	17	7	258	44	29	367	4	15	14	39	47	13	132					1	1	2								21	18	16	336	196	89	676
DODOMA	1	5	1			21	23	14	23	29	36	39	20	161						25	25			1			1	1	5	3	4	26		46	84
IRINGA	3	5	1	16	10	13	48	25	18	19	28	30	12	132						7	7		2	7	4	6	2	21	4	2	8	36	45	32	127
KAGERA	2	1	2		4	1	10	25	39	18	30	40	18	170								5	6	3		9	9	32	1	4	2	8	3	5	23
KIGOMA	1	1			9	1	10	19	14	9	13	16	4	75				2		3	5				2	2		4	2	4	8			18	32
K'RO	5	2	7			5	16	10	11	19	18	6	9	73															6	13	9	93	106	33	260
LINDI		2	1		1		14	3	3	3	7	5	3	24															1		8		1	1	11
MARA	5	3	5				4	19	22	43	29	43	13	169										12	1	2		15	4	3	3	64	69	52	195
MBEYA	8	6	5				1319	29	21	14	22	26	8	120								1	4	2	2	4		13	5	2	6			45	58
M'GORO	4	5	2		4	2	17	13	8	9	19	18	8	75									1					1	3	2	2		9	21	37
MTWARA	5	2	4	8	11	7	37	6	1	10	14	9	3	43				6	1	7	14								4	6	6	20	12	9	57
MWANZA	11	8	10				29	4	30	24	21	5	18	119						2	2	17	24	35	35	20	14	145	12	5	12			7	36
PWANI	3		3		1		7	2	2	5	7	6	2	24										1				1	2	5	6	6	9	1	29
RUKWA		2	1	4	7	3	17	4	9	9	7	27	6	62						8	8	1				1		2	2	4	6	12	12	5	41
RUVUMA	1	1	2				4	16	5	6	10	9	7	53															2	1	2	25	16	8	54
SH'NGA	8	2	6	1	4	6	27	18	20	9	44	46	27	164				1			1	40	26	14	44	70	25	219	6	9	4	1	51	30	101
SINGIDA	2		1	1	1	3	8	11	20	15	20	21	10	97						1	1	9	14	5	1	3	3	35	1	4	5	40	44	14	108
TABORA	4	3	2	1	1	9	20	4	20	21	30	30	14	124						2	2	4	5	16			1	26	9	10	22	50		31	122
TANGA	2	9		1	1	6	19	5	4	13	18	18	7	65						5	5				3	3		6	3	9	10	65	51	31	169
TOTALS	**81**	**77**	**65**	**305**	**117**	**111**	**756**	**257**	**292**	**295**	**420**	**451**	**207**	**1922**				**11**	**2**	**61**	**74**	**77**	**82**	**96**	**92**	**120**	**54**	**521**	**94**	**111**	**144**	**864**	**702**	**517**	**2432**

SOURCE:MINISTRY OF HOME AFFAIRS