



DOMESTIC VIOLENCE IN TANZANIA

A Need for Policy Change

Policy Brief

Introduction

Domestic violence includes but not limited to any behaviors that frighten, intimidate, scare, manipulate, sexually assault, abuse Children, abuse elders, hurt, humiliate, blame, injure, or wound someone living in the same household. Domestic abuse can happen to anyone of any race, age, religion, or gender. It can occur within a range of relationships including married, dating or living together couples

This document builds on evidence emerging from the review of key policy, legal framework, and other researched data regarding Domestic Violence

in Tanzania, by analyzing trends for national legislation, strategies, and plans, coordination as well as barriers to addressing domestic violence. The document seeks to influence enactment of the comprehensive law against domestic violence in Tanzania. Additionally, this brief is longing for conducive legal framework and multisectoral approach in efforts to prevent and respond to Domestic Violence.

The document offers a set of recommendations to lawmakers and policymakers in taking forward their commitment to enact a specific legislation against domestic violence in Tanzania.

Magnitude of Domestic Violence in Tanzania

a) Intimate Partner violence (IPV)

40% of all ever-married women reported having ever experienced physical, sexual, or emotional violence



4 in 10 women have Violence from Spouses



14% of ever-married women have experienced one or more acts of sexual violence, the most common being physically forced to have sexual intercourse by their spouse



1 in 10 women have Violence from Spouses



36% of women reported to have ever experienced emotional violence;



Women between 15-29 yrs
34% insulted by their husband

- Media survey done by Legal and Human Right Centre, 2019 recorded at list 14 incidents of VAWC, of which 12 were killings of women from their intimate partners, and 8 were due to jealous

b) Violence Against Children

Nearly 3 in 10 females and approximately 1 in 7 males in Tanzania have experienced sexual violence during their childhood (UNICEF)



and



25.95%

Increase in violence against children. In 2020, 7388 cases were reported across the country unlike in 2015 where 5,803 incidents were reported. (Police Report 2020)

26%

Increase of the incidences sexual Violence Against Childrens where 7263 cases reported compare to 2015 in which it was recorded 5803 cases, equivalent to increase of 615 cases.

- In the previous 3 month Total of 21 childrens were rapaed and the majority of perpetrators being close relatives and people who children know and trust. Home has become dangerous place for women and children's (LHRC report, 2019)
- In Tanzania, trafficking occurs both within and across the country's borders. Many cases involve children who are recruited under false promises of a good education, for example, and end up being exploited as domestic workers, in the sex industry, or in the fishing and mining sectors.

c) Injuries inflicted by a partner

The domestic violence done to women and girls inflict both physical and psychological harm on the victim and puts his or her health and in extreme cases, life, at risk. Domestic violence has long-lasting psychological effects such as depression and low self-esteem, which further compromise the victim's ability to acquire a basic standard of well-being. TDHS report observed that;

Overall, 70% of women who have ever experienced physical or sexual violence have experienced one or more types of injuries. The most common type of injury is cuts, bruises, or aches



7 in 10 women have Experienced Injuries



d) Help-seeking behaviors

- More than half of women (54%) who have experienced physical or sexual violence from anyone have sought help from someone an increase of 20% from 2010. One-third of women (34%) have never sought help or told anyone (TDHS 2016)

Factors Involved

(a) Inadequate legal framework that addresses domestic Violence

Since domestic violence is a serious concern in Tanzania, the government has made certain efforts to curb it by addressing it through multiple laws and policies. Tanzanian policies and legal frameworks are pluralistic. Several laws are addressing the same thing in different directions and dimensions. These laws include The Law of Marriage Act, Cap 29, The Penal Code, Cap 16, The Law of the Child Act, 2009, Anti Trafficking in Persons Act No. 6 of 2008, Customary Law of Inheritances and other Policies and Plans.

i. Law of Marriage Act, Cap. 29

Section 66 in the Law of Marriage Act (LMA) (1971) has touched on spousal violence which does not provide remedy for punishment to offenders. Neither does it describe the various forms of domestic violence in their entirety. If a spouse inflicts corporal punishment on his/her spouse, he will be charged as a criminal offense provided in the Penal Code. Over and above the LMA, allows a girl to be married at the age of 15 for parental consent and 14 by court permissions which is another form of Domestic Violence. Additionally, the LMA neither does it define domestic violence nor does it interpret the scope of domestic violence to cover children and other relative residing in the matrimonial homes.

ii. The Penal Code, Cap 16

The Penal Code, Cap. 16 is one of the oldest laws in Tanzania. it was subsequently amended by the miscellaneous amendment known as Sexual Offences Special Provisions Act (SOSPA) of 1998. However, the reforms made by SOSPA introduced sexual offenses such as assaults; common assault; and assault causing actual bodily harm. Thus, if the wife or child's beating does not result in grievous bodily harm, a charge for common assault of a spouse would not stand. Like the LMA Marital rape is not an offense under the Penal Code, neither does it define Domestic Violence or interpret its scopes.

iii. The Law of the Child Act, 2019

The LCA integrated the principles of the best interest of the child as elaborated in the Convention of the Rights of the Child of 1989 and the African Charter on the Rights and Welfare of the Child of 1990. LCA has taken into consideration almost all issues related to the rights of children under the age of eighteen. However, it doesn't define the age of marriage neither does it term it as one of the forms of domestic violence. The LCA doesn't provide guidance and sanctions to parents who conduct acts of domestic violence to their children to include forced them to get married, abet the trafficking their children's, exercise beating, and other child abuse incidents. Along with that LCA allow corporal punishment with the term justifiable corrections to a child, however, it didn't define justifiable corrections.

iv. The Customary Law of Inheritance

The Tanzanian society has many tribes, and each tribe has its own traditions. The Local Customary Law (Declaration) (no.4) Order of 1963 allow in some cases dealing with issues of inheritance. Majority of women and children has been denied their rights of inheritance by relatives and customary law itself due to customs and traditions. Neither does any law in Tanzania define denial of inheritance rights as a form of domestic violence.

v. Anti-Trafficking in Persons Act No. 6 of 2008

The law criminalizes all forms of trafficking in Tanzania. However, the act doesn't provide good access to legal redress or remedies, for victims of traffickers; and devaluation of women and children's human rights. Human trafficking is sometimes perpetrated by people who are living within the same households. There is no law which covers trafficking of women and children as one form of Domestic Violence.

vi. National Plan of Action to end Violence Against Women and Children (NPA-VAWC2016/17-2021/22)

The government's desire to reduce violence has been expressed in the National Plan of Action to End Violence against Women and Children (NPA-VAWC) 2017/2022. Under thematic area 1, the

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government intends to strengthen house hold economy specifically for women as a means of reducing gender-based violence. However, we don't have a law that define whether economic violence is a crime. Majority of women are denied their economic rights in these households. Thematic Area 2, the plan seeks to transform the harmful cultural practice by replacing the same with positive social norms incidents, and values. Some of the indicator highlighted in this thematic area includes reducing the incidents of Female Genital Mutilations (FGM) practices, Sexual Violence, Teenage pregnancies, Early Marriage and Physical Violence. This cannot be achieved as far as when we still have the Penal Code which doesn't prohibit FGM conducted for women above 18 years, The LMA which still allows girls to be married at the age of 15 and 14 respectively

b) Other Factors Involved

Apart from legal challenges, there are other factors, that perpetuate Domestic Violence, these includes

i) Patriarchal Culture

The patriarchal nature of the Tanzania society, fosters for such ideas to perpetuate domestic violence. The data shows 58% of women and 40% of men agree that a husband is justified in beating his wife for at least one of the following reasons: if she burns the food, argues with him, goes out without telling him, neglects the children, or refuses to have sex with him.

ii) Religious Factors

The patriarchal culture is strengthened by the misguided support of some religious leaders, who use Islam or Christianity as a tool to keep women in a subservient position. These leaders play an important role in validating the use of violence against women by presenting religious texts taken out of context to support their arguments.

iii) Insufficient of Awareness

In many areas of Tanzania, men and women are unaware of the laws and rights granted to them by the constitution. This leads to them being isolated from the system on the assumption that

there is no other option than to suffer in their homes. Low education levels result in them being economically dependent on the male members of the household as they do not have the required skill set to support themselves.

iv) Institutional Barriers

Those seeking justice are unable to get adequate support from state institutions. Lack of clear laws that define domestic Violence and set out the mechanisms to address such cases. Besides, lack of cooperation of police in registering cases of domestic violence, inadequate healthcare and shelter support for the victims, and costly and time-consuming judicial procedures are some of the other barriers that the women face. These discourage women from seeking help which makes them vulnerable to domestic violence.

Rationale for Domestic Violence Act Tanzania

a) Lack of specific legislation that Criminalizes Domestic Violence

As stated early there is no legal framework in Tanzania that specifically criminalizes Domestic Violence as a result increases the incidences of Domestic Violence, corruptions during the case handling and cases delay at the Courts of Law.

b) Existing of Contradicting and conflicting Laws in addressing Domestic Violence

As stated early the laws of Tanzania are pluralistic in Nature, this result in confusions in addressing issues related to Domestic Violence. The Law of Marriage Act, implies that a spouse is only not permitted to inflict corporal punishment to his / her spouses but it is silent on what will happen if he/she does so. It leaves that room to the penal code which tries to cover any other physical acts of violence as common assault to cover acts committed by any person that causing actual bodily harm. Thus, if the wife or child's beating does not result in grievous bodily harm, a charge for common assault of a spouse as stated in the

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penal code would not stand. There is a need to have one specific law that will address all issues related to domestic violence. Despite having police gender desks there contradicted by the existing of conflicting and contradicting laws in addressing domestic Violence

c) Inadequate definition of Domestic Violence and its Scope

Unfortunately, there is no legislation or policy which defines Domestic Violence in Tanzania. Domestic Violence is interpreted by the Law of Marriage Act, or general violence acts provided under the Penal Code of Tanzania, which doesn't cover all forms of domestic violence. The interpretations from both legislations don't go further to include partners who are not married but are in intimate relationships. Besides it also excludes children, women who are abused by relatives, who are not related by blood, living in the same household such as house girls. This excludes a major section of the perpetrators of domestic violence i.e., the in-laws and hence, limits the scope of addressing Domestic Violence.

e) Absence of family Court

Issues that concern domestic violence in most people are seen as a private matter to be addressed by the family and not to go public. Tanzania has no separate court system for family matters and thus GBV cases are tried in general courtrooms where criminal cases are held. Section 76 of the Law of Marriage Act, vest an original jurisdiction in matrimonial proceedings to be concurrently in the High Court, a court of a resident magistrate, a district court, and a primary court. However, most covered matters in these courts are an issue of divorce and separations as well as custody of children. If a wife or child's beating does result in grievous bodily harm, a charge for common assault of a spouse would stand and the criminal courts will be used to address domestic violence cases. It's challenging for most women and girls to feel reluctant to report incidents of domestic violence because of the court systems. The contradiction of laws also poses a challenge in knowing which specific sections and courts to initiate domestic violence cases, this led to delay of justice to the victims. There is a need to enact a Domestic Violence Act that will establish Family

Courts that will handle all matters relating to domestic violence cases, hence refer the matter to be solved amicably at the family context

f) Insufficient handling and support mechanisms for victims of Domestic Violence

The NPA-VAWC has established 3 safe homes through the National Guideline for the establishment and management of safe homes or shelter for the survivor of Domestic Violence. Sometimes the police Gender Desk are necessitated to put the victims of domestic violence in custody like offenders to save them from returning home where the act of violence is conducted. There are very few shelters in Tanzania and if the Domestic Violence Act is not enacted, to prevent the incidents from happening the impact will be huge in future than today.

g) Existence of cultural stereotypes

These incidences largely ignore the cultural context within which they operate. TDHS reported that a large section of community members think that certain reasons are acceptable and justified for being abused by their husbands. As stated earlier some community members think that a husband is justified in beating his wife for at least one of the following reasons: if she burns the food, argues with him, goes out without telling him, neglects the children, or refuses to have sex with him. There is a need to address this thinking by enacting domestic Violence Act that prohibit any justifiable reasons for domestic Violence.

h) Increased incidents of Domestic Violence by Close Relative and people that victims trust.

The report shows that the main perpetrators of domestic violence are close relatives including uncles, brothers, in-laws and even parents. This makes home to be the most dangerous places for women and children. The report shows that 1583 women are killed by intimate partners and family members in Africa each month. So, if we don't criminalize domestic violence, these incidents will not be reported as it is done by relatives who always take it as family matter and will be resolved within the family.

Best practices from other African Countries against Domestic Violence

South Africa: The Domestic Violence Act No. 116 of November 1996 was drafted with the participation of civil society members. The purpose of the act was to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide and to introduce measures that seek to ensure that the relevant organs of state give full effect to the provisions of this Act. According to South African Reports the existence of the law that criminalizes domestic violence has reduced the violent incidents for the fear of the perpetrators being charged with criminal offenses and increased the number of domestic cases registered in the court of law by 40%.

Kenya: Protection Against Domestic Violence Act, 2015 was enacted. For years in Kenya, domestic violence has been meted out on men, women, and children and there was no specific

legislation on such a crime. In May 2015, the PADV Act was accented and its commencement date was June 2015. The aim was to provide relief and protection to victims of domestic violence. and introduce non-conventional offenses which included: economic violence, emotional abuse, stalking, interference from in-laws as well as virginity testing and sexual violence in marriage. According to Kenyan reports, there is an increase of 25% of cases of domestic violence and a 21% increase of women who access justice.

Malawi: In 2006, The Prevention of Domestic Violence Act, was passed in Malawi. The act demonstrated the commitment of the State to eliminate gender-based violence occurring within a domestic relationship and to provide for effective legal remedies and other social services to persons affected by domestic violence. However, there is no specific data on how it has helped in reducing the incidents of domestic violence but it's an initiative that has proved that the government is committed to addressing domestic violence.

Recommendations

1. The government should enact a comprehensive Law against Domestic Violence
2. The government should harmonize all conflicting and contradicting laws and ensure Strong enforcement of legal provisions to effectively move towards ending Domestic Violence in Tanzania.
3. The government should establish family courts that will help fast-tracking the domestic violence cases and ensure justice to the victims.
4. The government in collaboration with stakeholders should strength the domestic violence reporting mechanisms for establishing and capacitating the women and children violence prevention committees
5. The Government and development partners should ensure prioritized funding for programming that prevents and responds to violence against women and girls within the home and the community.
6. The Government in collaboration with stakeholders such as civil society Organizations, Private Sectors and religious institutions to provide education and awareness on reducing cultural norms that foster domestic Violence.
7. The Government should work hand in hand with stakeholders to improving healthcare and rehabilitation services including establishing more shelters for women and children's who are victims of domestic violence.

About WiLDAF

Women in Law and Development in Africa (WiLDAF), is a Pan African women's rights network that is dedicated to promoting and strengthening strategies that link law and development to increase women's participation and influence in the community, national, regional, and international levels. It was founded in February 1990 in Harare Zimbabwe – following the NGO forum held within the context of the UN Decade for women- and, whose theme was “Women rights and Development: Network

for Empowerment in Africa”. Since then, the organization has established chapters in 26 African countries, including Tanzania, constituting over 350 organizations and 3,000 individuals who share these objectives.

WiLDAF has 20 years of experience and an excellent track record to advance women's rights and their status in Tanzania. This is because gender equality is not only a fundamental right but also a necessary foundation for a peaceful, prosperous, and sustainable world.

About Data-Driven Advocacy (DDA) Project

Data-Driven Advocacy (DDA) is a five-year project which aims at improving and sustaining Tanzanian rights-focused civil society's ability to advocate for, and influence policy on key human rights issues using data and information to drive results. The project has three main objectives:

1. To create Platforms for increased cooperation and collaboration among like-minded organizations for evidence-based advocacy are strengthened
2. Civil society's abilities to collect, generate, monitor, and report independent and reliable information concerning human rights abuses are strengthened
3. Civil society organizations, networks, and key individuals can respond to urgent and unanticipated needs.

The DDA working approach is through the establishment of the Working Groups (WGs) which are ideally the networks with a mandate to convene network activities around specific thematic and advocacy agenda. The Working Group One (WG1) is convened around the issue of closing civic space to respond to and address the acute threats to freedom of expression, association, and assembly while the Working Group Two (WG2) is on the rights of Women, Children, Youth and PWDs.

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Published by WiLDAF, 2021

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