

Reflections of an African Lawyer on Domestic Violence

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Introduction

I am a lawyer in the East African country of Tanzania. Tanzania is among very few countries in the totality of the 54 in Africa to have had a peaceful co-existence of its citizens from independence in 1961. Because of its stability, Tanzania has been host to thousands of refugees from the neighboring countries of Democratic Republic of Congo, Burundi, Rwanda, Uganda and recently temporarily, Kenya. This may explain why, of all the countries featured in the two articles in this eNewsletter, Tanzania is not mentioned.

However, despite its long civil peace, Tanzania is not spared the shared cultural values predominant in our societies. Domestic violence is very prevalent in Africa. It is true that there are systemic and cultural barriers that encourage domestic violence and discourage and prevent some African women from reporting abuse and accessing legal protections in our home countries, as well as in the U.S. In Tanzania, just like the U.S., the most prevalent domestic violence is done and encouraged in the home.

However, this is very different from religious teachings which both African Christians and Muslims are raised. Muslims—particularly those enlightened in religious teaching—would, on the day of marriage, remind a husband that cooking and washing are not the reasons that a man is marrying a woman. There is a saying in my country which says a “woman is not beaten by a stick, but by a piece of cloth.” (In Kiswahili, “Mwanamke hapigwi kwa fimbo bali kwa upande wa Kanga.”) This means that women are to be handled very delicately and not be subject to beatings. However, those who are aware and implement this saying are few and far between. The majority are the ones who batter their wives severely, sometimes to death.

Legal Progress

Tanzania gained its peaceful independence from Britain on December 9, 1961. In 1964, what was then Tanganyika united with Zanzibar to form the United Republic of Tanzania (URT). Similar to the federal system of the United States, laws of the two parts of the union are of two types: some apply to the whole country, while others apply only to one of the two territories. Family law operates separately, while the Penal Code is applicable to both parts of the union.

However, the URT is not a federal government, rather, we call it a unitary government due to its unique type of Union.

The Tanzanian Penal Code (Cap 16 R.E. 2002) is relied upon on to prosecute domestic violence just like any other offence. This law removed the original distinction between misdemeanors and felonies; i.e. they are all called offences. Assault, battery, and rape are all accommodated in this law.

In 1998, the Special Offences Special Provisions Act (SOSPA) amended the Penal Code to include in the offences of female genital mutilation (FGM) and domestic rape. The most important aspects of the new law which are beneficial to domestic violence victims include the following:

- For the first time, FGM became a criminal act punishable by a jail sentence for the parents of a child and the *Ngariba* who performs the act.
- For the first time the offence of rape did not require corroborated evidence, except for the expert evidence from a hospital. Previously, it was next to impossible to convict on these cases as there were no witnesses to testify against the rapists. Now, the victims of rape and sodomy themselves (if they are capable of understanding and explaining the circumstances) are taken to be key witnesses for the prosecution. If they happen to be toddlers or younger, an expert witness is sought and used, mostly from doctors who treated the victim.
- Convicts under SOSPA face up to 30 year jail sentences, plus compensation to the victim.

However, the weaknesses of this law are many. For example, it does not provide a safe environment for the victim to be reintegrated into the community. In one currently pending case, two girls of the same family ran away from home fearing infliction of FGM. Their aunt enticed them to her house, in order to undergo the 'procedure'. They smelled a rat and ran away again. They are at present in the hands of non-profit women's rights activists, awaiting the government's decision to allocate them to a boarding school. Here, the extended family is at its worst, employing filial relationships to harm its members. The non-profit as the intervening body is financially strapped to assist the many cases of domestic violence as it is; however, in this case, it is following up the matter with the government to ensure that these children stay away from their abusive parents and relatives. Unfortunately, the fact still remains that during vacation time and at the end of their studies, they will likely be reintegrated into their families. The threat to their safety is still very much present.

Another weakness of SOSPA is that collecting the promised victim compensation is next to impossible. In most cases, \$1,000 cash compensation is ordered, to be paid by the abuser. However, unless the victim is paid before the wrongdoer is incarcerated (which cases are rare indeed, since once the sentence is

pronounced by the court, the prisoner will be locked up), the convict who is getting a 30 year jail sentence will not be in a position to compensate the victim after the end of the term. The possibility of the victim litigating to ensure the payment of this compensation is very difficult, and to laypersons, is an insurmountable barrier. Victims typically end up getting nothing. Furthermore, if the victim is a parent, no child would insist upon this compensation, for cultural reasons. In Africa, parents raise their children to be their social security in old age. Likewise, no self respecting child would claim compensation from their own parents. It just is not done culturally. This is so because we count as priceless (cannot be equated to any amount of money) the trouble that parents undergo to raise a child to adulthood and independence.

Barriers to Accessing Justice

It is very true that African women who are victims of abuse continue to face multiple barriers to accessing justice. I witnessed this firsthand when an eight-month-pregnant friend asked me to escort her to the police station to complain about a beating she sustained from her husband.

The domestic violence inflicted on my friend did not start with beatings. Her husband began by going to his wife's employer and taking her salary. This was easy at the time because they worked for the same company. When my friend discovered this, she complained to the employer, who disciplined the cashier who gave away my friend's monthly salary to her husband, on the grounds that each of them was a separate entity in the eyes of the employer and are had different file numbers. When the husband was requested to return the salary, however, he refused. So, the employer deducted the amount from his salary afterwards. The employer paid my friend her due exact amount lump sum salary, and the cashier was warned from committing such acts again.

However, when the stealing turned to violence, my friend decided to go to the police. On our entry to the police station, we found a female police officer at reception. When my friend explained about her complaint, the police officer replied, "This is a domestic matter, why don't you go home and reconcile with your husband?"¹ (This happened some time in 1993. At the time, I had not even started learning the law. I have a feeling that this was a cataclysmic moment which propelled me eventually to go to study law.) We insisted on the Complaint though, and she filled the requisite form, without which no criminal bodily harm offence would be entertained in a court of law. This form is taken to be filled by a doctor on the extent of injuries accordingly found and treated.

This incident showed the truth that law enforcers are not well trained to combat domestic violence. The problem of domestic violence laws not being adequately enforced is more likely a result of domestic violence being seen as a private matter, rather than laxity. Of course, there is also lack of resources and political will compared to other pressing government priorities, which hinders the

government's participation in improving the situation. Unfortunately, domestic violence is not among national priorities in our country—so much so that the work of empowering and training law enforcement is left to non-profits (“NGOs”) to deal with. Many NGOs are dependent on donor funding and this is the only funding they have to enlighten the few law enforcers they can. The government has a long way to go towards correcting this. However, with the present world recession, it is expected that few funds would be readily flowing to NGOs in developing countries to continue with this work.

Nevertheless, the little that has been done by NGOs has helped, at least in urban areas. Law enforcers so seem to be more sympathetic towards reported cases of domestic violence. This was possible after human rights NGOs collaborated together to address the situation. Up to now in Tanzania, the NGOs have also had a measure of success in sensitizing traditional and religious leaders to the problem of domestic violence and training them to appreciate appropriate ways to respond to it. TAMWA has even gone further to provide a shelter for domestic violence victims, where counseling is also provided to both the abusers and the abused. However, African governments still have a long way to go to ensure full access to justice in this matter, and African NGOs have to take a long sustained campaign to change the mindset of our peers, to ingrain in their minds that domestic violence is a criminal offence and has to be properly handled.
