

# Gaps in Policies and Laws that Perpetuate Gender Based Violence in Tanzania

An Analysis and Synthesis  
by  
Human Development Trust  
**(HDT)**

FINAL REPORT

Dar es Salaam  
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Human Development Trust (HDT),  
June, 2011.

## ABBREVIATIONS

<b>AFNET</b>	Anti FGM Network
<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>AMREF</b>	Africa Medical and Research Foundation
<b>BCC</b>	Behavioral Communication Change
<b>CEDAW</b>	Convention for Elimination of all forms of Discrimination Against Women
<b>ELRA</b>	Employment and Labor Relations Act (2004)
<b>FGM</b>	Female Genital Mutilation
<b>GBV</b>	Gender Based Violence
<b>HDT</b>	Human Development Trust
<b>HIV</b>	Human Immunodeficiency Virus
<b>IEC</b>	Information Education Communication
<b>KIWOHEDE</b>	Kiota Women Health and Development Organization
<b>LHRC</b>	Legal and Human Rights Center
<b>MCDGC</b>	Ministry of Community Development Gender and Children
<b>PEP</b>	Post Exposure Prophylaxis
<b>PLHIV</b>	People Living with HIV
<b>PMTCT</b>	Prevention of Mother to Child Transmission
<b>SADC</b>	Southern African Development Community
<b>SOSPA</b>	Sexual Offences Special Provision Act (1998)
<b>STIs</b>	Sexually Transmitted Infections
<b>UNDP</b>	United Nations Development Programme
<b>WHO</b>	World Health Organization

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# EXECUTIVE SUMMARY

## Introduction

Generally all laws and policies have different implications on both men and women. In this report twelve (12) laws and policies have been analyzed to identify gaps which contribute to the persistence of gender inequality, including Gender Based Violence. Some laws and policies were prepared in the late 1990's, to address specifically gender equality and women's interests such as the Sexual Offence Special Provision Act (SOSPA), 1998; the Land Act, 1999; the Village Land Act, 1999; and the Women in Development and Gender Policy, 2000. Evidence shows that, despite the existence of these laws and policies, gender inequality is still widespread in the country because of existing gaps and limited enforcement of the Laws and inadequate implementation of the Policies. In addition, there is a need for harmonization of some laws that contradict each other. For example, according to the Law of Marriage Act, Revised 2002, girls are marriageable at the age of 15 whereas at this age a girl is considered to be a child in the Employment Act, 2004; the Anti-Trafficking Act, 2008; the Law of the Child Act, 2009 and the Sexual Offence Special Provision Act (SOSPA), 1998.

## Key Findings

The Law of Marriage Act, Revised 2002 has various loopholes which cause the infringement of women's rights and abuse such as polygamy to continue. The Law recognizes customary law which impinges women on equal division of property when husband and wife divorce or legally separate. It does not speak about domestic violence which is rampant in many marriages, it allows early marriages where girls at the age of 15 years can be married with consent from parents or guardians. The Anti-Trafficking in Persons Act, 2008 is not explicit about the trafficked persons within the country where especially girls from the rural areas are sent into towns and cities for domestic labor and prostitution. This problem is endured by many girls as young as even below 14 years of age.

In the Sexual Offences Special Provision Act (SOSPA), 1998 marital rape has not been considered. Rape applies “... **where the girl or woman is not the man's spouse or the man is a separated spouse...**” Many times women are forced by their husbands to have sex without their consent for various reasons such as illness. In addressing Female Genital

Mutilation (FGM) the law only protects children less than 18 years, giving room for the practice to be performed on older girls and women. The Employment and Labor Relations Act, 2004 makes the following provisions that affect women: two months leave for nursing mothers to start work in night shifts after delivery, working overtime, and time allowed for nursing mothers to breastfeed their babies during working hours which is two hours. These provisions have implications to the safety and growth of the baby.

The Land Act, 1999 makes a provision which states that **“Where a spouse obtains land under a right of occupancy for the co-occupation with the wife or wives...”** There are few cases where male spouses register their wives as co-owners of land because land ownership rights by women and girls are restricted by customs and traditions. In mortgaging matrimonial homes, the law requires that the spouse of the borrower living in the matrimonial home to have assented. There are many occasions where women are suddenly rendered homeless when their spouses secretly mortgage their matrimonial houses. There should be more ideal legal procedures of involving the wives or partners in the process of acquiring mortgages.

In the Village Land Act, 1999 there is a clause on application for customary right of occupancy in village land which states that **“A person, a family unit, a group of persons-... may apply to the village council of that village for a customary right of occupancy”**. This clause does not instantaneously enable women to be involved in the process for applying customary rights of land occupancy due to preventive traditional values and customs. Often times it is men who apply for ownership of land and in the majority of cases they do not involve their spouses.

The HIV and AIDS Prevention and Control Act, 2008 makes a requirement for mainstreaming gender into HIV and AIDS plans. However, the problem often is on the implementation of gender activities especially where budgets are limited. The Law states that pregnant women and the men responsible for the pregnancies be offered voluntary HIV testing but there is no mechanism in place to enable men to comply. Also the Law requires that **“... any person who has knowledge about being infected by HIV shall immediately inform his/her sexual partner or spouse”**. Many people avoid testing because they shun away from pointing fingers at each other. If the wife discloses her HIV status the husband can turn around and accuse her of unfaithfulness and she can be physically abused and chased away. Condom use is promoted in the Law but

the problem is that female condoms are still not easily accessible to them and not user friendly. Again women in the rural areas have no skills to negotiate for safe sex with the use of male condoms because of their subservient position to men. The right for treatment of opportunistic infections provided by the Law does not give women that right where treatment is not free because women often cannot afford it.

In the National Research and Development Policy, 2010. Statements on gender based violence are too general and insufficiently address gender issues. Not only that gender is a theme needing to be researched in view of tackling gender inequalities but also where applicable, applied research should address impacts on women and men who are usually different. The Policy on Women in Development and Gender, 2010 is progressive and it has addressed issues of gender and women well.

## **Recommendations**

The recommendations made focus on lobbying and advocacy for change and enforcing implementation of the laws and policies. Moreover, the report recommends what should be done to tackle GBV acts, who should be involved and the support needed by survivors of Gender Based Violence.

## 1.0 OVERVIEW

Gender Based Violence (GBV) is a human rights abuse which is reflected in the fight against poverty but also impedes the progress in the national response to HIV and AIDS. It is widespread in the country in both rural and urban areas where women and girls do not have equal rights compared to men and boys to participate in social, economic and political arenas limiting satisfactory prosperity in their lives. Specific acts of GBV include among others: domestic violence which is physical and sexual abuse; rape, use of derogatory language; early marriages; female genital mutilation; unwanted pregnancies; forced labor; unequal division of property between men and women; infection with HIV and STIs and human trafficking especially of girls for domestic work and prostitution.

More women than men are affected by gender inequalities especially GBV. There are various policies and laws that have been instituted which could protect women and girls and provide them equal rights. However, these policies and laws have not articulated the needs of women and men properly i.e. they are gender biased. In cases where provisions are made to address gender issues including GBV, they are limited due to existing loopholes. On the other hand, the laws and policies are not being enforced effectively so as to provide sufficient protection to the women and girls. Moreover, although the laws exist, acts of GBV continue to be reported because of recognized customs and traditions.

## 2.0 Literature Review

Gender inequity exists in Tanzania as it is in many Sub-Saharan countries. GBV is a reality which is recognized as a human rights issue and public health concern. In Tanzania, women still experience discrimination and they are vulnerable to human rights violations to the time being. According to Tanzania Demographic and Health Survey (TDHS), of 2010, 50% of every married women have experienced either physical, emotional or sexual violence from husbands.

Discrimination against women stems from cultural practices and societal attitudes that are gender biased while others are a result of policies and laws that do not address gender equality issues or have provisions that are gender discriminative.

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1. TDHS 2010

Domestic violence, is a hidden act within intimate relationships where women are physically and sexually abused. We have often read or heard from mass media about women who have been beaten and/or killed by their spouses although the Law of Marriage Act, Revised 2002<sup>2</sup> prohibits a spouse from inflicting corporal punishment on his/her spouse. Many women endure marital rape and beatings and they become trapped in these barbaric acts. There are various reasons why women do not disclose these acts. There are cultural norms where customs and traditional practices condone the harassment and abuse of women because they are supposed to be submissive to their husbands. Some religious beliefs do not allow separation or divorce in any circumstance. The economic status of women is often lower than that of men because women have limited access to resources. This situation makes women endure domestic violence so they can be provided for by their husbands. The issue of children is also very pertinent to women. Hence, women endure abuse in marriages because they do not want to leave behind their children who may be harassed and undergo abuse by the women who take over their positions after them.

Domestic violence has direct health consequences due to the fact that physical injuries increase the chances of HIV transmission where sexual molestation occurs. In addition, women undergo psychological effects which cause trauma. A study conducted by WHO in 2006 found that 30 percent of survivors of spousal battery ended up with serious injuries due to severe beatings<sup>3</sup>. The normalization and acceptance of spousal battery do hinder adequate steps to be taken because of the reluctance by women to report the violence which is aggravated by cultural, social and family pressures.

The Law of Marriage Act, Revised 2002 and SOSPA, 1998 have little impact, because they do not protect unmarried couples from domestic violence; and do not define corporal punishment, thereby excluding many forms of domestic violence, including economic deprivation. Female Genital Mutilation (FGM) is another form of GBV which is practiced by many ethnic groups in the Tanzanian society. The practice results in severe consequences on women's health. FGM's outcomes may include gynecological complications, psychosexual problems, and maternal and neonatal mortality. FGM is a practice which is demeaning to women

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2. The Law of Marriage Act , Revised 2002

3. Tanzania Human Rights Report, Legal and Human Rights Center, April 2009

and girls. Societies which practice FGM also perform it to women above the age of 18 years. The SOSPA, 1998<sup>4</sup> only protect girls who are under 18 from FGM. It has been noted that older girls and women undergo the practice when they are found to have skipped it during their early years. This is performed by force, sometimes, when women deliver through the assistance of Traditional Birth Attendants.

Girls and women who undergo FGM become traumatized and experience other problems including over-bleeding, infections and obstetric related problems and death. As Tanzanians raise awareness about the harms of FGM<sup>5</sup>, the number of people practicing it decreases, particularly in places where there has been intensive awareness campaigns against the practice. It was reported in 2005 that 15 percent of women aged 15–49 in Tanzania had experienced FGM. Anti-FGM Network (AFNET) and other groups that are involved in eradicating FGM report that there is a decline in public acceptance of FGM. Nonetheless, the fact remains that the practice has gone underground - by being performed more secretly to avoid being caught. This is even more hazardous because it is sometimes done under unsanitary conditions with implications on the health of the affected girls. On the other hand, FGM is increasingly being performed on girls at younger ages<sup>6</sup>.

Early marriage for girls is rampant in many parts of the country because the age of 15 years is legal for girl marriage, while the legal age of marriage for boys is 18. Girls are deemed mature enough for marriage once they begin menstruation, while boys are not considered marriageable until they can financially provide for a family. It is alleged that girls have less power to decide about when and who they can marry than the boys and that girls are sometimes forced to marry men much older than themselves.

There are negative implications related to early marriages. Those implications can have a long term impact on the prospects of girls as they often do not complete their education. When they marry they may not have opportunities to undertake further education and training because they will be too occupied with family responsibilities and taking care of their homes. It is likely that these girls will become mothers at a young age, increasing risks during pregnancy and delivery which in turn increases maternal and neonatal mortality. Pregnancy and child bearing is risky for young people.

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4. Sexual Offence and Special Provision Act 2008

5. Tanzania Bureau of Statistics ORH, 2005

6. USAID, Nov 2008

Women in Tanzania have limited access to property and inheritance rights. This is another form of GBV. The Tanzanian constitution; CEDAW; the Land Act, 1999; the Village land Act, 1999 and the Law of Marriage Act, Revised 2002 stipulate that women and men in Tanzania have equal property rights. Nevertheless, customary legal provisions and common cultural practices tend to undermine women's ability to acquire, inherit, maintain, and dispose of property<sup>7</sup>.

Majority of women do not have the same opportunities as men for education and economic independence. The Demographic and Health Survey of 2004 found that 64 percent of men completed primary education, while only 58 percent of women did the same<sup>8</sup>. Poor families tend to value boys' education more than that of girls who may be taken out of school to assist with domestic responsibilities or get married especially in the rural areas. Education is the foundation of everything which also facilitates departure from the bondage of poverty in which many women and girls are trapped due to lack of adequate education and training.

There is increasing recognition about gender discrimination. This awakening includes a growing acknowledgement of how prevalent GBV is and the ways and extent to which it is affecting women and girls. It also affects men and boys and disrupts social economic wellbeing of the people.

The Ministry of Health and Social Welfare (MoHSW) through its Reproductive and Child Health Section (RCH) has developed a Gender Based Violence Policy and Management Guidelines to be used by actors and implementers to provide quality care to survivors of GBV. The guidelines provide for the following health services that can be offered to survivors of GBV in Tanzania: Management of life-threatening injuries; Pregnancy tests and prevention; Post Exposure Prophylaxis (PEP) to prevent HIV; Counseling for HIV; Family Planning; STIs and STI Treatment; and Referrals for other services<sup>9</sup>.

The Police Force, which has historically been criticized for being soft on domestic abuse cases, has been trying in the last few years to grow more sensitive to women's issues across the board. Women's desks which address GBV have now been initiated in the Police Force whereby

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7. TAWLA 2004

8. National Bureau of Statistics, 2005

9. Gender and Gender Based Violence Interventions in RCH section, MoHSW, March 2011

Tanzania Female Network was established in 2008. The desks for GBV are now operative in Dar es Salaam and the Police have been trained both male and female officers to deal with domestic violence cases at each of the city's 18 police stations, with plans to reach all 365 police stations in the country. GBV reports are now filed in separate rooms instead of being filed in the police station's lobby and survivors of violence can choose to deal with female officers exclusively. Nationwide, the police has started to incorporate GBV into the curriculum for police training but it is alleged that it will take time for the training to reach every corner of the country. In addition, police officers in rural areas have been less concerned or take matters of domestic violence less seriously and do not see such issues as crimes but as 'private matters'<sup>10</sup>.

Plans have been initiated to expand GBV desks in Police Stations throughout the country. However, more efforts need to be made to reach rural areas where spousal abuse is far more common. In the rural settings police stations are sparse, and cultural traditions may be more entrenched which aggravate GBV.

The heads of states from the SADC region adopted the Declaration on Gender and Development in 1997. The declaration acknowledges that gender disparities exist between women and men and that this may lead to discrimination. The Declaration is a commitment by member states to eradicate all forms of discrimination against women in order to have sustainable development. Such a step towards Gender Equality is further complemented by commitments made by member states at international and regional levels. The Beijing Platform for Action and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) are commitments made at international level. Recently, the African region has adopted the African Protocol on Women's Rights which is heralded for encapsulating intensively and comprehensively different aspects of women's rights and is at times referred to as the African Women's Bill of Rights<sup>11</sup>. In an audit conducted in the SADC region, it was found out that some countries including Tanzania still use laws which perpetuate discrimination and violence against women.

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10. IPP Media Website

11. Report On Women's Rights Audit-WiLDAF, 2005

### 3.0. Objectives

The following are the objectives that were set out in the ToRs:

- To document policies and laws related to GBV,
- To analyze the policies and laws and identify gaps in relation to the protection of women and girls against GBV,
- To make recommendations on ways to rectify the gaps with a view to addressing the needs of those already affected and preventing such effects,
- To provide guidance on how to provide services to those affected and infected by HIV and AIDS as a result of GBV, and
- To document case stories from the field.

### 4.0 Methodology

- Discussing the ToRs and the assignment with HDT to clarify issues and what is expected,
- Accessing and reviewing relevant policies & laws related to GBV from HDT,
- Conducting an analysis of the policies and laws to identify existing gaps,
- Developing an implication paper by reading the policies and laws and surfing internet for relevant materials from websites,
- Using materials read and internet surfing to prepare text on leaflets for advocacy on eliminating GBV.
- Accessing the GBV research study report from HDT and reviewing it,
- Through reading the research report on GBV, developing three case stories,
- Using materials read to develop messages for T-shirts and banners

## 5.0 Gaps Identified in Selected Laws and Policies Related to Gender Equality

### 5.1 The Law of Marriage Act, Revised in 2002:

- a. This law provides for polygamous marriages but it does not explain under what circumstances the husband could marry another wife and how to protect the first wife from being alienated by the husband once he marries another wife. More often than not, earlier wives are not told by their husbands regarding intentions to marry other wives. In the Article, Preliminaries of Marriage no. 20, point 2 item (a), it is stated that the first wife may give objection about the husband marrying another wife on the ground that taking another wife is likely to result in hardship and lack of maintenance to the children. This is only possible for learned women who know that there is such a provision in the Law of Marriage. Many women who are affected by this practice, especially those in the rural areas do not know about the Law of Marriage or about this particular provision. Besides, the customs and traditions are so strong on polygamous marriages that the first wife cannot question her husband's decision to take another wife which often leads to severe beatings by the husband and being ridiculed as a jealous wife by other family members.
- b. The Law has regard to customary law and traditions in the division of properties between husband and wife when divorce occurs. Customs and traditions do not provide for equal share in that women get very little or nothing. There are many cases where women have been thrown out of their matrimonial homes in cases of separation and divorce due to customs and traditions which favor men. This situation has, at times, led to violence against women when they insistently pursued to be given their share of property. It is a paradox that, where property division is a serious matter especially to the female partner or wife when the male partner or husband dies. However, it is not the case when the female partner or wife dies as all the property automatically stays intact with the male partner or husband and in rare cases does anyone query.
- c. The Law has made a provision for the court to order a man to pay maintenance for the benefit of his child where he has refused or neglected to adequately provide for a child. This provision applies to children born in various circumstances including those born out of wedlock. This is a good initiative but it will only be

- applicable when the men agree that they are the fathers of those children. There are many men out there who do not agree that they fathered such children resulting to the burden of caring for those children being carried by their mothers alone. Often, these women may not be capable to carry the responsibility because of poverty. Limited ability to provide for the children may lead to children born out of the wedlock becoming destitute and ending up in the streets where they are groomed to be vagabonds.
- d. The law is silent about handling step-children within a marriage. The media has reported many cases where such children have been severely abused by step-parents in the majority of cases. Step-parents situations affect many children by often leading them to being neglected. Their needs are often not met properly including being properly fed, being properly clothed and accessing necessary items for school. There are children who have died due to physical abuse by step-parents, others are molested sexually by their step-fathers, and others are overworked while insulting language is used which affects them psychologically. Many children run away from such abuses and become street children.
  - e. The revised Marriage Act of 2002 has not still changed the age of marriage for girls from 15 years. This is contrary to the African Charter on the Rights and Welfare of the Child, 1990, which provides that: “... **child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years**”. Activists promoting gender equality including the Ministry of Community Development Gender and Children and NGOs have raised this concern in many occasions. At the age of 15 one is still a child and is regarded to be school-going. At this age the child is not mature enough to take up responsibilities of a wife in a marriage, taking care of a home and bearing children which can result to neonatal and maternal mortality. Abuse by husbands can also occur including his relatives because of inability to effectively undertake responsibilities of marriage. The Marriage Act contradicts the Law of the Child Act which states that a child is a person below the age of 18 years.
  - f. Item 66 in the Law declares that “**Notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment**

**on his or her spouse”**. However, domestic violence which is also termed as spousal battery is widespread in Tanzania. The statement above does not address domestic violence and causes thereof. The LHRC reports that 50 percent of women in Tanzania were beaten on a daily basis by their partners and 25 percent interviewed in a 2006 study reported being subjected to non-spousal battery. Spousal battery in which men beat their wives or partners results into injuries that range from mild to severe. A 2006 WHO study found that 30 percent of survivors of spousal battery ended up with serious injuries due to severe beatings<sup>12</sup>. One of the reasons for the high incidence of spousal battery is the existence of customs and traditional practices that ignore harassment and abuse of women. The normalization and acceptance of spousal battery hinder adequate steps to be taken because of the reluctance by women to report domestic violence which is aggravated by cultural, social and family pressures.

## **5.2 Anti-Trafficking in Persons Act, 2008:**

- a. Severe trafficking should include and give priority to pregnant women, children and people with disabilities. Care and support given to children and persons with disabilities should also be provided to pregnant women who are caught in trafficking situations because of their delicate condition.
- b. The Law is not explicit about the trafficked persons within the country where especially girls from the rural areas are sent into towns and cities for domestic labor and prostitution. In most cases girls by themselves are convinced to move to towns with promises to be educated and provided with jobs as domestic workers by their relatives or people who come from their neighborhood. It is usually people they know. However, they end up being exploited by providing cheap labor as domestic workers/house-girls and others used in brothels as sex workers. For example, they may not be paid their salaries, be physically abused with repeated beatings, be subjected to the use of abusive language, be survivors of sexual molestation by the members of the family they work for, not being allowed to eat family food, not provided with proper medical care and have their movements restricted. Some live like slaves. This has been a long term concern and some measures have been initiated to address domestic workers' plights. The introduction of ward level secondary schools has also reduced the number of girls who move to towns as well as increasing enrolment of girls into secondary schools.

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12. Legal and Human Rights Report, LHRC 2009

### 5.3 The Law of the Child Act, 2009:

- a. The law has taken consideration of almost all issues related to the rights of children who are considered to be under the age of eighteen. However, it is silent about the marriage age at 15 years for girls. Other laws recognize a person of this age to be a child. Early marriages can have negative impacts on the long term prospects of girls, as they often do not complete their education. It is likely that these girls will become mothers at a young age which increases risks to their health during pregnancy and delivery. Early marriage supports and perpetuates gender power imbalances that already exist in society.
- b. The foster parent aspect of the Child Law needs caution to ensure that the child is fostered by a kind and loving parent to protect the child from being mistreated and abused. The foster parent is only required to fill and send the application form to the Commissioner who grants approval. There is need for thorough investigation by Social Welfare Officers to make follow up and substantiate information in the application form and to physically see the home of the applicant where the fostered child will stay in order to approve or disapprove.

### 5.4 Sexual Offences Special Provision Act, 1998 (SOSPA):

- a. Marital rape has not been considered in this Act. A provision for rape applies to “... **non-consensual sexual intercourse between a man and a girl or woman, where the girl or woman is not the man’s spouse or the man is a separated spouse**”. At times women are forced by their husbands to have sexual intercourse without their consent for various reasons such as illness. Such behavior is exacerbated by customs and traditions which expect women to be subservient to men. The failure to include marital rape as an offence in the Penal Code means that women are denied the protection of the law for sexual violence that occurs within marriages. An act like this may also lead to unwanted pregnancies which may complicate matters within marriage due to psychological impacts to the woman resulting into further effects on to the child. In addition, lack of taking legal action for such an offence continues to enhance imbalances of power relations between women and men which continues to damage marital relations.
- b. Rape can lead to conception and bearing of children. The SOSPA does not mention children born in this way nor does this appear in the Law of the Child Act. Because trauma is experienced by women

who conceive through rape, the end result may be rejection and hatred against the children. Without proper counseling and psychological support to the mothers such children may be mistreated or even abandoned by their mothers. Those children must be closely monitored and support offered to the mothers. It is important to ensure that the family and the community does not stigmatize either the child or the mother.

- c. The provision made in SOSPA in as far as FGM is concerned states that **“Any person who, having the custody, charge or care of any person under eighteen years of age... causes female genital mutilation or carries or causes to be carried out female genital mutilation... commits the offence of cruelty to children”**. This provision only protects children under the age of 18 years giving room for the practice to be performed to older girls and women. It is a known fact that in societies which practice FGM it is also performed to women who are over the age of 18 years if they are found to have skipped the practice during their early years. It has been noted that it is performed by force, sometimes when the women deliver through the assistance of Traditional Birth Attendants. Women who undergo this practice get traumatized and may acquire other side effects which are detrimental to their health and wellbeing.
- d. Sexual favors at work place is a hidden practice and it is rampant. SOSPA has not addressed it although it is happening regularly. It has been acknowledged that it happens to both women and men when seeking for employment and require to provide sex in exchange for the job position. There is need to undertake studies to document incidences and be able to put in place the right measures by means of relevant policies and laws to stop this unacceptable practice.

### **5.5 Employment and Labor Relations Act, (ELRA) 2004:**

- a. In the article on Discrimination it is stated **“An employer shall register, with the Labor Commissioner, a plan to promote equal opportunity and to eliminate discrimination”**. The Law does not provide for guidelines for preparing the plan in order to maintain some standards in providing equal opportunities in employment for both women and men by all employers. Making employers prepare the plans on their own will bring about a lot of variations. As a result, some employers may eventually provide for more equal opportunities than others.

- b. Two months is provided for breastfeeding mothers to stay at home before they resume in night shifts. Unless this is up and above the 84 days of maternity leave which has not been clarified, the two (2) months provided intervene the maternity leave. At two months the baby is solely depended on breast milk for its food according to health experts' recommendations. Also, it is at night that babies need their mothers most. It is important that more time should be provided for the safety and health of the baby especially for mothers who are single parents. Some women have lost their jobs because either they find it difficult to leave their babies or their husbands do not allow them to work in night shifts when their babies are too young. Working overtime should also be considered for nursing mothers.
- c. The law provides two definitions at the age of 14 and 18 depending on the type of work to be performed. This may give room to child abuse and child labour.
- d. The Law states that ***"During any leave cycle, an employee shall be entitled to at least 3 days paid paternity leave"***. The number of days for paternity leave is sufficient if delivery is normal. However, there are situations where problems emerge during delivery and the spouse is required to provide support to his wife. A provision should have been made to consider situations like this to be substantiated with medical proof.
- e. Although forced labor is prohibited in this Act, there are situations where one is indirectly forced to work because of various circumstances. For example where a person owes his/her employer he/she will feel indirectly obliged to continue working even when he would prefer to leave due to poor working conditions or for other reasons. This happens more in the private sector where some employees are trapped for years by their employers to provide cheap labor. Many women are found in such situations.
- f. Despite positive measures and legislative attempts to end child labor and trafficking, hundreds of Tanzanian children are still reportedly working in hazardous places. Many employers in Tanzania continue to employ children to work in mines, as housekeepers, babysitters, in petty trading, farm work, etc. where they provide cheap labor. There are very few cases in which the perpetrators are taken to task but generally there is a weakness on the part of law enforcers as well as adults in reporting violations against children.

## 5.6 The Land Act, 1999:

- a. Access of rights to owning land by women from a long time has been problematic because of customs and traditions which do not allow land rights to women. In the Land Act, 1999 there is a provision made to take care of this matter but the provision is limiting: It states, **“Where a spouse obtains land under a right of occupancy for the co-occupation, and use of both spouses or where there is more than one wife, all spouses, there shall be a presumption that, unless a provision in the certificate of occupancy or certificate of customary occupancy clearly states that one spouse is taking the right of occupancy in his or her name only or that the spouses are taking the land as occupiers in common, the spouses will hold the land as occupiers in common and, unless the Presumption is rebutted in the manner stated in this subsection, the Registrar shall register the spouses as joint occupiers accordingly”**. The question is: how many male spouses obtain the right of land occupancy for co-occupation with their wives? This is rare unless deliberate efforts are made to make this happen. For example, the application form for rights of occupancy should have a section where a married man is required to include the name(s) and signature(s) of his wife/wives accompanied with his and her/their photographs. This will enable the wife/wives when she/they are owners of the land to be able to take legal action where the husband or relatives or any other persons interfere and make decisions about the land which could affect them and their children. There are legal issues related to land such as mortgaging houses and leasing land, and changing the use of land, etc. which the wife/wives must participate in making such decisions and not only be left to her/their spouse.
- b. There are problems related to inheritance of matrimonial properties including land by women when they divorce or when spouses die. The Marriage Act clearly states that division of matrimonial assets is equal between spouses. However, due to customs and traditions land is supposed to be passed on to sons. Therefore, ownership of clan land by women is not feasible. Most tribes do not give land ownership to girls because once they marry the land ownership will shift to the clan of her husband and this is unacceptable. Where the husband dies the wife/wives can continue to use the land but they do not have property rights and are unable to lease or sell it.
- c. There are situations where women and their children have been rendered destitute when relatives of the deceased man

take ownership of the land and dispose it for their own benefits. Sometimes the wife/wives are caught unaware. If she is or they are informed and try to resist they can be abused in different ways. For example, they can be attacked with abusive language, get threatened and/or physically beaten including their children, etc. Often the relatives will deceive the wife/wives that they will be well taken care of with proceeds accrued from the land that belonged to her/their husband but this rarely happens.

- d. According to the Land Act, in leasing the land when problems occur on the side of lessee, there is more consideration given in case the lessee becomes homeless, etc. However, no consideration is given in case the wife and children of the person who leased the land undergo suffering due to the transaction made by the husband/father in leasing the land which was supposed to provide for the family needs.
- e. In mortgaging matrimonial homes the law says **“A mortgage of a matrimonial home including a customary mortgage of a matrimonial home shall be valid only if: (a) any document or form used in applying for such a mortgage is signed by or there is evidence from the document that it has been assented to by the borrower and any spouse of the borrower living in that matrimonial home (b) any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the borrower living in that matrimonial home”**. This is a transaction which can be detrimental to the lives of families if it is not properly executed. There are occasions where the wife has not been informed about the mortgage only to suddenly lose her home because the husband secretly took a mortgage without informing his wife and fails to repay the loan. Women contribute in building their matrimonial homes although they are not often included in the registration of the rights of occupancy. There should be more ideal procedures of involving the wives/partners in the process for acquisition of mortgages.

### 5.7 The Village Land Act, 1999:

- a. This is a customary law which gives more room for discriminating against women. The following provision that affects women states that, **“A person, a family unit, a group of persons recognized as such under customary law or who have formed themselves together as an association, a primary co-operative society or as**

**any other body recognized by any law which permits that body to be formed, who is or are villagers, or if a married person who has been divorced from, or has left for not less than two years, his or her spouse, was, prior to the marriage, a villager, and all of whom are citizens, may apply to the village council of that village for a customary right of occupancy**". The quoted statement is limiting to the women because it does not instantaneously enable women to be involved in applying for customary rights of land occupancy due to preventive traditional values and customs. It is usually men who apply for ownership of land and in the majority of cases they do not involve their spouses. In order to make sure that women are not denied their rights of ownership, the Village Councils should be cautious when processing registration initiated by men and facilitate their wives to participate during the entire process of registration for customary right of occupancy of village land and enable wives/partners to appear as co-occupiers.

- b. The Act states the following: **"... have special regard in respect of the equality of all persons, such as - treat an application from a woman, or a group of women no less favorably than an equivalent application from a man, a group of men or a mixed group of men and women; and adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy"**. This provision is treating women as equal to men in regard to land ownership. It is silent, however, about customs and traditions which prohibit women from the right to own land. Deliberate efforts to support women to own land must be initiated by the Village Councils and facilitate their participation in the registration process for obtaining customary right of occupancy.

### **5.8 The HIV and AIDS Prevention and Control Act, 2008:**

- a. A requirement has been made by the law for mainstreaming gender into HIV and AIDS plans. The problem is that when there are insufficient funds gender related activities will not be implemented. This occurs especially at Council, Ward and Village levels where usually funds are not sufficient and due to low priority given to gender issues, related activities are normally skipped.
- b. The Law states that every pregnant woman and the man responsible for the pregnancy or spouse shall be offered voluntary HIV testing. This means that the woman is responsible to bring the man involved but this is often difficult and many men do not comply. Women cannot force men to go for testing and in the

rural areas it is worse because of observed cultures and traditions that give men more power.

- c. The Law requires that “... **any person who has knowledge about being infected by HIV shall immediately inform his/her sexual partner or spouse**”. Many people avoid this because they shun away from blames that can occur. Women are also afraid of being beaten and thrown out of their homes if they tell their spouses of their HIV positive status. Although it is a crime by this law for any person to physically abuse his spouse or use derogative language because of disclosing HIV status, this is particularly problematic to married women. The husband can turn around and accuse the wife of unfaithfulness and she can be beaten or thrown out of the house. This goes back to discriminating cultures that are deeply encroached in the society. This tendency is rampant in the rural areas. In addition, many people may not know about this law. Moreover, women are usually afraid and do not know how to go about telling their husbands for fear of being attacked. As such they decide to keep silent.
- d. The law promotes the use of condoms but women's condoms are still not easily accessible to them. Again women, particularly in the rural areas do not have skills to negotiate with men on the use of condoms for safe sex.
- e. PMTCT is a very important issue but when women have to provide substitute milk to their babies because they are not allowed to breast feed can be a challenge to poor women who may not afford to buy substitute milk. This has not been addressed.
- f. The right for treatment of opportunistic infections has been provided by the Law. However, where the treatment is not free women who are often poor cannot afford it.
- g. The law states that “**PLHIV have the responsibility not to infect others...**” this has become a crime with a penalty. However, many women are infected by their spouses and partners because once the husband knows that he is HIV positive he does not tell the wife because of not only stigma but due to discriminatory and deeply rooted cultures.

### **5.9 Women in Development and Gender Policy, 2000:**

The policy is progressive and has made good achievements in addressing many issues of gender and women specifically. It directs what needs to be done to tackle problems facing women and bring about gender equality in all sectors. Although in its objectives, the policy stresses that there will not be laws that are

gender discriminative either from the government or customs and traditions. The fact is, most laws recognize customary laws which are discriminator to women. For example, the Law of Marriage Act, Revised 2002; the Land Act, 1999; and the Village Land Act, 1999 have those tendencies. The policy has put in place strategies that can help to raise the status of women in social economic and political arenas, but there is still much to be done for all sectors to attain gender equality between men and women. The challenge remains on eliminating discriminatory customs and traditions and enabling women to have equal status with men from family to community and national levels.

#### **5.10 National Youth and Development Policy, 2007:**

- a. The policy states that ***“The legal definition of youth varies in Tanzania according to specific purpose such as the Law of Marriage which allows a young person of 15 years to get married...”*** This policy defines youth as being from 15-35 years. However, in the Law of the Child Act, at 15 one is considered to be a child. There is need to harmonize the age limit of children in the laws and policies.
- b. The policy statement is not explicit about situations where youth live in difficult circumstances. Girls are especially trapped in prostitution and boys in drug use although both are involved in these practices with varying extents. Precise mechanisms to deal with difficult circumstances of the youth are not stated. Generally, the policy makes general statements about putting in place mechanisms to deal with various issues of the youth without being specific about what those mechanisms are.
- c. The previous policy of 1996 mentioned about the National Youth Council which seems to have been instituted because the current policy of 2004 still talks about the same. The main issue here is to ensure that there is a gender balance in the election of members for the council.
- d. Rural-urban migration is serious issue in this country mainly affecting the male youth. Many youth are running away from difficulties in the rural settings expecting better life in the urban centers. There should be more innovative approaches put in place to contain the youth in the rural areas which should be made explicit in the policy. This requires an integrated approach needing involvement of all sectors and institutions with ample coordination and accountability to ensure that youth are maintained in the rural areas where they are engaged with projects and activities of quality value to provide them employment and appropriate

- income to sustain their lives.
- e. In the area of arts and culture, youth; both male and female are increasingly being involved in both rural and urban areas at varied extents. They engage in drama, acting (producing movies), music and art. This is a form of employment and a major source of income for them. It is important that the policy is more specific by putting a statement as to how it will promote and protect the work of youth in this area to ensure that they benefit. Sports and games is also another area where many youth are engaged and earn income that sustains their lives. However, opportunities for women/girls are fewer to engage in sports and games because they are often busy with house obligations. The policy must be explicit about how to increase girls' participation in this area.
  - f. There are many issues that impinge on female youth specifically early marriages, FGM, limited access to resources including inheritance of family properties particularly land, which bar them from making progress in their lives. This is exacerbated by customs and traditions which put women and girls in lower status in the society. The policy is silent about how these issues should be tackled to protect female youth.
  - g. In chapter four the policy outlines the roles of various stakeholders in youth development but it does not state issues of coordination and accountability which are crucial in making things happen.

### 5.11 Cultural Policy, 1997:

- a. This policy is outdated at 14 years since its establishment. The policy is silent about bad cultural practices that perpetuate discrimination of women and girls.
- b. The policy has addressed the aspect of recreation superficially. This is an area which is engaging many youth today where there are specific issues pertaining to women and girls which need to be tackled. In sports for example, there are fewer women and girls who participate. Also, the areas of drama, acting, and music are fairly new in the country but engaging many youth especially in the urban areas. However, women and girls face challenges to compete effectively with men in negotiating with producers, not to mention the problem of copyrights which is affecting both men and women. This is an area which needs close follow-up from a gender perspective in order to provide for equal opportunities to both women and men. On 12/4/2011 there was an artist who was being interviewed on TV - TBC1 channel who alleged that he was concerned about "... **the increasing number of prostitutes**

**who are invading the acting profession because prostitution is not paying well...**” This needs validity. However, in revising this policy, consideration should be made to incorporate all matters pertaining to culture.

- c. The Cultural Policy speaks about **“Good customs and traditions shall be identified, enhanced and utilized in molding peaceful, respectable and harmonious nation”** but it does not say anything about those traditions and customs that are found to be bad and humiliating especially women and girls. Early marriages, FGM, polygamy, payment of dowry, unequal division of property and issues of inheritance, just to mention a few, are bad traditional practices that have negative implications to the progress of girls and women. In most ethnic groups there are some bad practices emanating from their customs and traditions. By and large these do not promote gender equality but they give men more power over women and exacerbate GBV. **“Parents and society at large shall be encouraged to respect values and good traditions and customs of child upbringing”** is another statement of the policy which does not recognize the fact that culture and values do change and/or are replaced over time affecting the upbringing of children.

#### **5.12 National Research and Development Policy, 2010:**

The policy has a section which deals with crosscutting issues where gender equality has been included. The policy statement regarding gender states that **“... the government in collaboration with other stakeholders shall ensure that research activities and benefits accrued from research do not discriminate against disadvantaged groups and to ensure equitable access to research funds, education and training...”** This provision is insufficient given the importance of the subject as far as gender is concerned. Not only that gender is a subject needing to be researched in view of addressing gender inequality but also applied research should address impacts on women and men when applicable.

## 6.0 CONCLUSION

Gender inequality leads to GBV which is a human rights abuse. Established laws and policies have gaps that allow gender inequalities including gender based violence. Some laws and policies have provisions that address gender equality issues but they are not sufficiently enforced. Recognition of customary laws exacerbates GBV.

## 7. KEY RECOMMENDATIONS

The following recommendations are comprehensive, suggesting ways to address GBV by all interested parties including the government and non-state actors. These recommendations focus on lobbying and advocacy for changing and enforcing the laws and policies, and to carry out implementation of the policies. Furthermore, ways to tackle GBV acts are proposed including who should be involved and the support needed by survivors of GBV.

### **Specific recommendations:**

- a. Conduct intensive discussions with the Law Reform Commission and develop action plans (time bound) to ensure that existing laws are reformed to eliminate all types of discriminatory laws including those that are gender blind.
- b. Initiate a Technical Working Group under the Law Reform to undertake continued dialogue on reforming the laws that are discriminative including those that do not address GBV.
- c. Engage in lobbying and advocacy with other partners working in GBV to address gaps in laws and forge for policy change in order to eliminate GBV.
- d. Use mass media - Radio, TV, Newspapers, Press Releases - for lobbying and advocacy.
- e. Establish linkages and work with health providers to enable survivors of GBV access the right health services they need.
- f. Initiate activities for addressing GBV which should deliberately include men so that they participate to tackle problems of GBV and identify solutions. Also, encourage men to become advocates for combating GBV.
- g. Community involvement is necessary through Local Government Authorities at Ward and Village levels with Ward and Village Councils being responsible to facilitate discussions about GBV and derive solutions and by-laws that can be used to stop GBV.
- h. Produce and disseminate IEC and BCC materials and user-friendly versions of some selected laws to enhance people's understanding and use the laws to protect themselves.
- i. Work together with the Police Force specifically the Women's Desks in the Police Stations to enhance their capacity to tackle GBV.
- j. Collaborate with providers of legal aid to get assistance to establish paralegals in the project sites. Where paralegals exist, to collaborate and support the efforts.

- k. Train media reporters to properly report GBV acts and where possible assist the survivors of GBV to access appropriate services such as getting medical help, informing the police and rescuing them from dangerous situations
- l. To coordinate with other interested partners to participate in the sixteen (16) days of activism against GBV which is annually commemorated from the 25th of November to the 10th of December .
- m. Engage Religious Leaders and identify specific roles they can play to combat GBV.
- n. Partner with the government especially the Ministry of Community Development, Gender and Children to specifically support the implementation of FGM and GBV action plans.
- o. Initiate and/or assist crisis centers/homes where in emergency cases survivors of GBV can go to seek for help until their cases are resolved.
- p. Document experiences, lessons learned and best practices in implementing GBV activities and share with other partners nationally and internationally.
- q. Other laws such as the Education Act (1995) needs to consider girls who become pregnant to continue with schooling so that their right to education is not denied.
- r. The child Act 2009 needs to state that it is prohibited for a girl under 18 years to get married.

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