TANZANIA WOMEN JUDGES ASSOCIATION

Enlightenment Candle

International Association of Women Judges

STOPPING THE ABUSE OF POWER FOR PURPOSES OF SEXUAL EXPLOITATION: NAMING, SHAMING, AND ENDING SEXTORTION

A TOOLKIT

A PROGRAM OF THE
TANZANIA WOMEN JUDGES ASSOCIATION (TAWJA)
IN COLLABORATION WITH THE
INTERNATIONAL ASSOCIATION OF WOMEN JUDGES (IAWJ)

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Stopping the Abuse of Power for Purposes of Sexual Exploitation: Naming, Shaming, and Ending Sextortion is a program funded by the Royal Netherlands Government Ministry of Foreign Affairs, MDG3 Fund, through a grant awarded to the International Association of Women Judges (IAWJ). The program is being implemented by the IAWJ's partner associations of women judges in three countries, namely Bosnia-Herzegovina, the Philippines and Tanzania.

Tanzania Women Judges Association (TAWJA) wishes, first and foremost to thank the Chief Justice of the United Republic of Tanzania Hon. Mohammed Chande Othman and through him the Judiciary as well as the Government of Tanzania for their full support in the activities of TAWJA including the Program on Sextortion.

In the course of the Program TAWJA has held seminars and workshops for judicial, non-judicial officers and other law enforcement officers. Realizing the need for capacity building of both judicial and non-judicial staff within the Institution, his Lordship the Chief Justice has not only released TAWJA trainers, judicial and non-judicial staff to attend the seminars but the Judiciary has also financially supported TAWJA to carry on training on human rights to over 200 Diploma in Law students at the Institute of Judicial Administration in Lushoto.

We wish also to acknowledge and appreciate with deep gratitude the financial support of the Royal Netherlands Government which enabled us to carry on with this program and to reach over 1000 judicial officers, non-judicial personnel, law enforcers, and Diploma in Law students through seminars and workshops, plus many more community members through the dissemination of sextortion brochures.

The IAWJ has played a very big role in providing direction, guidance and encouragement throughout the program. The IAWJ has been the implementing organization in all of TAWJA's judicial education Programs from 2001 to date. We are immensely grateful to them.

Many people have supported us in the program and in the preparation of this Toolkit. It is not possible to mention everyone here; suffice it to say that we are thankful to all who have helped us realize our goal in the program.

We do hope that this Toolkit will be a valuable resource in the fight against Sextortion.

Introduction

Tanzania Women Judges Association (TAWJA) is a non-profit organization comprising of female judges and magistrates of different levels, which was formed in the year 2000. TAWJA is affiliated to the International Association of Women Judges (IAWJ). Both associations are committed to equal justice and the rule of law.
Tanzania Women Judges Association's main objectives which are consonant with those of IAWJ are:

- Advancing women's rights to equal justice,
- Promoting women's access to the courts,
- Developing judicial leadership,
- Conducting legal research on gender equality and human rights,
- Exchanging information on issues of critical concern to women and
- Uprooting gender bias from the judicial system and the community.

Tanzania Women Judges Association has been involved in various activities to advance women's rights to equal justice. The Association is also involved in judicial education programs for both male and female judicial officers aimed at advancing human rights and eliminating discrimination on the basis of gender and making courts accessible to all.

Gender Based Violence

The different forms of discrimination on the basis of gender are often referred to collectively as "gender based violence." The Expert Committee charged with interpreting the United Nations Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW") has defined gender based violence as *"violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."* (CEDAW General Recommendation No. 19, http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm).

While gender based violence includes physical violence, the term also encompasses non-physical harm suffered as a result of discrimination. The "sextortion" conduct addressed by this Toolkit is a form of gender based violence.

Although the term is gender neutral, in fact, gender based violence has a greater impact on women and girls, as they are most often the victims and suffer greater physical damage than men when victimized. For this reason, the term "gender based violence" is often used interchangeably with the term violence against women. The UN General Assembly in 1993 defined violence against women as *any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering for women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life*. Although the term "sextortion" is new,

the conduct at issue fits squarely within the scope of Article 2 of the UN Declaration on the Elimination of Violence Against Women (DEVAW), which specifies that "violence against women shall be understood to encompass . . . *[p]hysical, sexual and psychological violence occurring within the general community, including . . . sexual harassment and intimidation at work, in educational institutions and elsewhere. . . .* "(emphasis added).

Gender based violence takes many forms, including physical, sexual, psychological, and economic violence. The term is often used to point to the dimensions within which discrimination against women takes place. Women's subordinate social, cultural, political and economic status in the society makes them more vulnerable to all forms of gender based violence and contributes to an environment that accepts excuses and even expects discrimination and violence against women.

Gender based violence is a grave reality in the lives of many women in Tanzania. It results from gender biases plus social and economic inequities that give privileges to men over women and condone domestic violence. Domestic violence is a violation of women's human rights. Violence directed against women by their intimate partners (current or former spouses or boyfriends) is an epidemic of global proportions that has devastating physical, emotional, financial and social effects on women, children, families and communities around the world.

Tanzania Laws and Policies on Gender Based Violence

Legal protection from gender based violence in Tanzania is primarily based on two Acts:

- The Law of Marriage Act prohibits a spouse from inflicting corporal punishment on his/her spouse. However, the law t does not protect unmarried couples from domestic violence, and it does not define corporal punishment, thereby excluding many forms of domestic violence such as economic deprivation. (TAWLA, 2004).
- Sexual Offences Special Provisions Act (SOSPA) criminalizes various forms of gender based violence, including rape, sexual assault and harassment, prostitution, female genital cutting and sex trafficking.

Activities of Tanzania Women Judges Association

Eliminating violence against women throughout the world has been one of the main goals of the International Association of Women Judges which believes that women judges are in a unique position to advance the rights of women through the judicial system, and to protect and empower women throughout the world.

On its part, Tanzania Women Judges Association has been involved in various training activities for judicial officers and other law enforcers in Tanzania:

1. Jurisprudence of Equality Project (JEP)

The IAWJ's Jurisprudence of Equality Project, Tanzania (JEP) was introduced in Tanzania from 2001 to 2003. This innovative judicial training program addresses issues of discrimination and violence against women in order to protect women's human rights. When the project period expired, TAWJA sustained JEP with the support of the Judiciary of Tanzania. The goal of the JEP training is to equip judges and magistrates with knowledge and skills

needed in resolving cases arising in the national courts which involve discrimination and/or violence against women, in accordance with the principles enshrined in domestic, international and regional human rights treaties.

2. Jurisprudence on the Ground [JOG]: 2008 to 2010.

This was a two-year human rights program funded by the United Nations Democracy Fund (UNDEF) through a grant to the International Association of Women Judges (IAWJ). The program was jointly executed by the Tanzania Women Judges Association and the Society of Women And AIDS in Africa Tanzania [SWAA-T]. The International Association of Women Judges was the implementing organization and provided technical assistance. TAWJA published pamphlets on property rights, marriage and succession, complaints against judicial officers, litigation procedures and witnesses in court.

JOG was a training program for Tanzania Judges and Magistrates on International Conventions and Regional Charters on violence against women and domestic human rights laws particularly those relating to marriage, succession, custody, adoption and property rights.

Under the JOG Program, TAWJA trained SWAA-T leaders who will train community based leaders (CBOs) at grass roots level who counsel HIV victims, orphans and widows on basic human rights, fundamental human rights and related matters.

3. Stopping the Abuse of Power for Purposes of Sexual Exploitation: Naming, Shaming, and Ending Sextortion: 2009 to 2011.

The United Nations Millennium Development Goals (MDGs) were developed out of the eight chapters of the United Nations Millennium Declaration, signed in September 2000 by most UN member states. The eight goals are:

1. *Eradicate extreme poverty and hunger*
2. *Achieve universal primary education*
3. *Promote gender equality and empower women*
4. *Reduce child mortality*
5. *Improve maternal health*
6. *Combat HIV/AIDS, malaria, and other diseases*
7. *Ensure environmental sustainability*
8. *Develop a global partnership for development.*

The present "sextortion" program is funded by the Royal Netherlands Government through a grant to the IAWJ from its MDG3 Fund, created to advance Millennium Development Goal number 3: ***to promote gender equality and empower women***. This program is administered by the IAWJ in collaboration with the women judges associations in Tanzania, the Philippines and Bosnia-Herzegovina. It is a 3-year program, from 2009 to 2011.

The goal is to stop the abuse of power for purposes of sexual exploitation in the public arena and in the society.

The program is known as "***Stopping the Abuse of Power for Purposes of Sexual Exploitation: Naming, Shaming and Ending Sextortion." The abuse of a position of power or authority to extort sex takes many forms, but it always involves someone in a vulnerable position who needs something that the person in authority has the power to grant or withhold. When the person in authority demands a sexual favor in return, it is sextortion. As one example Illustrates, the harm to the victim can be substantial and, in an era of HIV, even fatal.***

> ***In a certain office in Dar, an accountant who has since died from HIV/AIDS routinely extorted sex by putting a condition of first dating female clerks and office attendants working in his department before assigning extra duty to them. Extra duty enabled the victims to earn a mere shs 2,000/= on Saturdays. Sooner or later, the entire office contracted HIV. There were no survivors. In that situation, sextortion, that is, abuse of authority by the late accountant, cost the lives of about ten women. Did those ten women and their boss not spread the disease to their spouses and other persons? In all likelihood, this pathetic situation also created orphans. That is why women judges must relentlessly fight against sextortion.***

In Tanzania the program has brought together judicial officers, non- judicial personnel, investigators, prosecutors, police, prison officers, and other law enforcement personnel to learn about sextortion and develop strategies for addressing it.

Under the sextortion program TAWJA has conducted the following Programmes:-

- A seminar for law enforcement officers;
- Seminars for judges and magistrates in three different regions of the country;
- Seminars for second year diploma In law magistrate trainees at the Institute of Judicial Administration in Lushoto;
- A follow-up workshop for law enforcement officers;
- Seminars for non- judicial personnel in the Judiciary; and
- Dissemination of sextortion brochures in communities throughout the country.

The Goals/Purposes of the Sextortion Toolkit. This Toolkit is designed to:

1. Address a wide range of circumstances under which vulnerable women and children suffer sexual molestation, harassment, exploitation and humiliation through abuse of authority.

2. Be a resource for law enforcers, stakeholders, and the public.

3. Raise awareness and generate interest in eradicating the degrading practice of sextortion in public and private institutions.

4. Build cross-disciplinary bridges among stakeholders, law enforcement agencies, and interested persons in mainstreaming sextortion into anti-corruption efforts, and in mainstreaming anti-corruption ideas and activities into gender work.

5. Help to reduce sexual abuse, harassment, and exploitation by fostering greater awareness, a higher self consciousness, and good ethical behavior in private and public institutions.

6. Underscore human dignity and respect in private and public institutions, and by extension in the family as well as in the society in Tanzania and elsewhere in the world.

What is in the Sextortion Toolkit? The **Toolkit defines sextortion and provides** resource materials that address the following topics:

1. The role that the different stakeholders -- judiciary, police, prosecutors, medical practitioners, and the media - play in combatting sextortion.

2. An overview of how sextortion fits within the broader context of sexual abuse.

3. The legal framework for prosecuting sextortion in the criminal justice system'

4. The legal framework for bringing sextortion cases in the civil justice system.

5. Challenges faced in the investigation and prosecution of sexual offences such as sextortion.

6. The relationship between sextortion and public service ethics. TAWJA has included the topic of Code of Ethics for Public Officers in the Toolkit to underscore the importance of maintaining high ethical standards in the work place. Sextortion comes about when there is no respect for the code of ethics, and it has far reaching adverse effects on families and the whole community.

7. The way forward in naming, shaming, and ending sextortion In Tanzania.

8. Resources available to help fight sextortion.

9. An appendix of sextortion cases.

SEXTORTION DEFINED

What Is Sextortion?

Sextortion is not a common expression. It is a new terminology used to describe a conduct which is not only sexually abusive, but also incorporates the element of corruption. The sexual component need not be sexual intercourse or even physical touching. It could be any form of unwanted sexual activity, such as exposing private body parts, posing for sexual photographs, participating in phone sex, or submitting to an inappropriate touching. Sextortion does not include conduct or activity of a non-sexual nature.

As for the corruption element, the perpetrator must be a person in authority and must abuse that authority by indulging in the activity of demanding, or accepting a sexual favour in exchange for the exercise of the authority. In other words sextortion is a form of corruption in which sex, not money, is the currency for the bribe.

The corruption aspect of sextortion involves three elements: The first one is abuse of authority. Authority is exercised in many ways, including legal authority, moral authority, traditional authority, religious authority, the authority of a teacher or supervisor, or the authority of physical force. The important thing to observe is that for the incident to constitute the offence of sextortion, the authority must come from a legitimate source. There must be sufficient rules or understandings about the scope of the authority so that the abuse can be identified. A good example is the government official whose authority and responsibilities are established by law. For example an Immigration officer who is required to issue a visa demands sex instead of compliance with the established rules which govern issuance of visa. Others like teachers, doctors, employers or clerics may also be subject to laws regulating their conduct. But even where the limitations are not express; the proper reach of their authority is understood. A teacher's authority to grade a student is not dependent on sexual favours but on the academic performance of the student. An employer's authority to make promotion decisions does not include authority to base the decision on matters which are not related to the employee's performance.

The second element is *quid pro quo* meaning "this for that" exchange. The abuse of authority to obtain a sexual favour implies an exchange or *quid pro quo - a term* used to describe a form of sexual harassment in which an employment benefit or detriment is conditioned on the employee's response to a sexual request. As in sexual harassment cases, sextortion may involve exchange at any point along a continuum that ranges from explicit to implicit depending on the subtlety with which the person in authority extorts the sexual favour. Whether explicit or implicit, it is the "this for that" exchange - a sexual favour in exchange for some benefit that the person in authority is empowered to withhold or counfer - that is central to the corruption component in sextortion. For this reason, it is no defence for the perpetrator to allege that the benefit sought by the victim was for a third party.

The third element is psychological coercion rather than physical force. Sextortion relies on the coercive power of authority rather than on physical violence or force to obtain sexual favours. The abuse of authority implies an

imbalance of power between the perpetrator and the victim. This imbalance allows the perpetrator to exert coercive pressure on the victim to accede to sexual demands. Where the perpetrator's power is so great and the victim so powerless, no physical restraint or force is needed to extort sexual favours. The psychological coercion inherent in sextortion is a figurative knife that can be every bit as powerful as a real knife held to the victim's throat.

For example, a prison guard is guilty of sextortion if he tells an inmate's wife that he will only allow medicines to be delivered to her husband if she sleeps with him.

What Is Not Sextortion?

As stated earlier, not all conduct that is sexually abusive, exploitative, discriminatory or even criminal constitutes sextortion.

Sextortion requires that the abuser have some form of executive authority over the victim. Where that authority is lacking, the sexual abuse is not sextortion:

- *For example, a stranger who jumps from the bushes with a weapon and forces a woman to have sex is guilty of rape, but not of sextortion.*
- *A husband who blackens his wife's eye because of refusing sexual intercourse is guilty of domestic violence, but not of sextortion.*
- *A man who impersonates a senior civil servant and tells a woman that he will help her acquire a government-built apartment if she will sleep with him, may be guilty of fraud and deception, but not sextortion, as he cannot abuse authority he does not possess.*

Sextortion also requires an exchange or quid pro quo -- a benefit in exchange for a sexual favor. Where that exchange is missing, the sexually discriminatory conduct Is not sextortion:

- *A hostile work environment, in which sexual innuendo is used and pornography displayed, may constitute sexual harassment, but not sextortion.*

*It should also be noted that **not** all exchanges of sex for a benefit constitute sextortion.*

- *A father who gives his underage daughter in marriage to discharge a debt may be abusing his position of authority, but it is the father, not the child, who seeks the benefit. As long as the child bride is an unwilling pawn, not a participant, in the negotiation, the father and the future husband may be guilty of a slave-like practice, but not of sextortion.*
- *A woman who offers sex to a stranger in exchange for money may be engaging in prostitution, but not in sextortion, as the stranger does not occupy a position of authority vis a vis the woman.*

Briefly it can be argued that what distinguishes sextortion from other types of abusive conduct is that acts of sextortion have the following in common: sexual misconduct and abusing authority.

Couldn't Sextortion Be Prosecuted under other Laws?

In many cases, the answer is absolutely yes. Depending on the context, this abuse of authority could be prosecuted under section 130 (3) of the Penal Code as rape, sexual harassment or indecent assault. It can also be prosecuted under section 25 of the **Prevention and Combating of Corruption Act, 2007** which makes "sextortion" an act of corruption. It states:

> ***"Any person being in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment a promotion a right, a privilege or any other preferential treatment commits an offence and shall be liable on conviction to a fine of not less than 1 million Shillings but not more than 5 million shillings or to imprisonment for a term of not less than three years, but not more than 5 years or to both".***

This being a fairly recent legislation it has not been much tested in the Courts. So far there a few cases pending in the subordinate court. In RM Criminal Case No. 7 of 2010 filed at the Court of Resident Magistrate at Iringa, one Michael Ngilangwa, a Paster of Evangelical Lutheran Church at Iringa was charged under Section 25 of the Prevention of Corruption Act No. 11 of 2007 for demanding sexual favours from the complainant. The accused was a teacher of the complainant, a form one student then. He requested sexual intercourse as a condition for favouring her in English and Divinity examination results and other preferential treatment. He was convicted and sentenced to pay a fine of Tshs. 500,000/= or serve a term of imprisonment for one year. Another one is still pending in the Resident Magistrate Court at Mbeya (Criminal. Case No. 135 of 2009.

It is to be noted that from the amendments brought about by SOSPA specific situations where people in authority may take advantage of their positions to sexually abuse those under their authority or power have been enumerated. These situations as stated under section 130 (3) of the Penal Code include people in official positions of leadership, religious leaders, traditional healers, management or staff of a remand home or other place of custody, management or staff of a hospital. Though these incidents are not always brought to light, nevertheless occasionally such incidents are reported. For example it was reported in Majira Newspaper of January 28, 2010 that the District Adult Education Officer for Simanjiro District was arraigned for the rape of his house helper. The Court of Appeal sitting at Tanga in Criminal Appeal No 320 of 2009 between **Seif Mohamed El-Abadan and the Republic** (unreported) dismissed an appeal in which a medical doctor had been convicted of raping his female patient on the examination table.

What Good Does It Do To Call this Abuse of Power "Sextortion"?

Because many of these cases are slipping through cracks in the law and not being brought out at all, giving them a name will make it easier to shine a light on the problem and take steps to redress the wrong. It is hard to conceive of - much less discuss - matters for which we have no vocabulary. Naming the phenomenon - sextortion - will facilitate study, discussion, documentation, prosecution, and ultimately, elimination of the abuse of power to obtain sex.

THE ROLE OF STAKEHOLDERS

The law enforcement officers all have a role to play if the campaign against gender violence generally and sextortion in particular is going to succeed. Tanzania Women Judges Association has identified some of the stakeholders and their role in eliminating violence against women. They include the Judiciary, Prosecution, Police, Prisons, Medical Practitioners, and the Media.

Ø The Judiciary:

Courts are critical institutions in addressing all forms of gender based violence, including sextortion.

- Judges and magistrates play a crucial role in the legal system's response to gender based violence. They are generally the final authority in civil and criminal matters involving domestic abuse.
- They are responsible for delivering equal justice to all individuals regardless of their gender, race or financial status.
- Judges and magistrates make decisions that affect the lives of the victim, the perpetrator, the children, and potentially other family members.
- Judges and magistrates preside over cases involving inheritance, property rights, custody, employment, discrimination, sexual harassment, rape, domestic violence and other issues of that nature.
- If human rights commitments have to be implemented at the national level, the judges and magistrates have to play leading roles.
- The judicial system can help to protect victims and their families, and ensure that perpetrators are held accountable, which in turn will prevent or at least reduce further gender based violence.

Barriers in the legal system that impede victims' ability to access justice include:

- Hours of operation and/or location of the court;
- Difficulty in obtaining certification from a medical doctor;
- Delay in court procedures; and
- Monetary sanctions imposed against perpetrators.

Ø The Police

Police play a critical role in the quality and timeliness of protection available to victims of gender based violence.

- In our society, we turn to the police to intervene in violence.
- We call them for protection: our own, a neighbour's, a stranger's on the street. We believe and trust that they will protect us.
- Police officers carry the authority to legally remove an assailant, using force to do so if necessary.
- Police officers initiate the investigation that a prosecutor relies on when bringing a case to court that involves domestic or other forms of gender based violence.

Historically, however, women who faced domestic violence in their homes could not rely on police protection. Since

the larger community saw domestic violence as a private matter, police were trained to respond accordingly. The community and the criminal justice system expected officers to be involved in only the most extreme, isolated cases. The domestic violence matters were treated as "family trouble, domestic disputes, and husband-wife spats." These attitudes towards domestic violence have ramifications for other forms of gender based violence as well. Victims who perceive the police as unresponsive to domestic violence complaints may be reluctant to bring a complaint of sextortion. Police and communities who perceive domestic violence as a private sexual matter may be less sympathetic to victims of sextortion.

Ø The Prosecution

- It is trite law that in criminal cases, the burden of proof ordinarily rests on the shoulders of the prosecution.
- The prosecution should properly study the case and competently present the same at the required standard of proof.
- The accused does not have to prove his innocence. His responsibility is either to opt to remain silent when called upon to give his defence or raise a probable defence to counter the prosecution evidence.
- The court is bound to ground a conviction on watertight prosecution evidence or acquit the suspect if the prosecution case is weak.

Ø Medical Practitioners

- Access to healthcare is limited in Tanzania, as hospitals are mostly concentrated in urban areas; dispensaries and health centers are available in rural areas, but they may lack medical staff and supplies.
- User fees hinder use of services. This difficulty in access affects everyone but it is likely to place a particular strain on women, who have limited access to finances, increased healthcare needs because of pregnancy and child birth, and extremely large domestic workloads - sometimes in addition to formal employment.
- When a woman does present her injuries as a result of intimate partner or sexual violence, doctors record forensic evidence using an incident report form, "Police Form 3" (PF3) and may be required to testify in court based on the evidence that she/he recorded on the PF3.The form is available only from police stations, so survivors must report to the police before seeking health care if they want to press charges.
- Due to apathy or corruption, getting a medical doctor to complete a PF3 may be difficult for a helpless victim.
- Although it is not legally required, some doctors will not treat a gender based violence patient unless she/he has already been to police station to obtain a PF3. While the importance of reporting and prosecuting gender based violence should not be undermined, survivors also should not be forced or pressured to report or press charges. If a health provider refuses to treat a woman who does not have this form, the doctor is essentially forcing the patient to make at least an initial contact with police.
- Women's fear of the justice system, embarrassment for being sexually abused, and limited mobility are all reasons why women may feel inhibited from obtaining a PF3
- A well documented medical record can strengthen domestic violence and sexual assault cases when they are brought to court. It constitutes third-party factual evidence corroborating or establishing that

the victim has indeed been violently attacked or sexually abused.

- Today the importance of documenting abuse is recognized in many health care protocols and training programs. However many medical records contain shortcomings that prevent their admissibility as evidence in court and other legal proceedings. Health care providers can improve the admissibility of evidence, and strengthen the case of domestic violence victims, by correctly completing, duly signing and stamping the PF3 of the victim.
- Medical records are often difficult to obtain, incomplete, or inaccurate, and the hand-written notes are often illegible. Health care providers are often confused about whether, and how, to record information useful in legal proceedings. They also may be reluctant to testify in court, concerned about the confidentiality of medical records.
- Health care providers can improve record keeping in a number of ways, such as by documenting factual information rather than making conclusive or summary statements, photographing the injuries, noting the patient's demeanor, clearly indicating the patient's reliability, refraining from using legal terms, recording the time of day the patient was examined and writing legibly for authenticity and evidentiary value.

Ø The Media

- The media is an efficient and effective tool in public education via newspapers, radio, television, internet and other multimedia information and communication systems with capacity to provide coverage over the country and worldwide.
- The Tanzania Women Media Association, for instance, has designed a particularly effective televison advertisement warning about sextortion. It depicts a school girl in uniform being seduced by an amorous man. The school girl confidently rejects the sexual overtures saying "sidanganyiki" meaning "I cannot be deceived."The embarrassed man shamefully walks away.
- The media commendably sensitizes the people on sextortion by reporting cases on the sexual offences and related matters.
- The media is a stakeholder and important partner in combating sexual abuse in any part of the world.

SEXTORTION IN THE BROADER CONTEXT OF SEXUAL ABUSE

Sexual abuse, also referred to as **molestation**, is the forcing of undesired sexual behavior by one person upon another, when that force falls short of being a **sexual assault**. The offender is referred to as a **sexual abuser** or (often pejoratively) **molester**.[1] The term also covers *any* behavior by *any* adult towards a child to stimulate either the adult or child sexually. When the victim is younger than the **age of consent**, it is referred to as **child sexual abuse**.

There are many similarities, and also important differences, in laws and definitions used around the world.
In Tanzania sexual abuse means illegal sexually oriented acts or words done or said in relation to any person for gratification or for any other illegal purposes. [2]

Types of sexual abuse

There are many types of sexual abuse, including but not limited to:

- Abuse of a position of authority to extort sexual favors -- "sextortion."
- Non-consensual, forced physical sexual behavior such as rape or sexual assault.
- Sexual kissing, fondling, exposure of genitalia, and voyeurism.
- Exposing a child to pornography.
- Saying sexually suggestive statements towards a child.
- The use of a position of trust to compel otherwise unwanted sexual activity without physical force
- Incest, when it is coerced by force or emotional manipulation.

Sexual Harassment

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women defines sexual harassment of women to include:
"Such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."

While such conduct can be harassment of women by men, many laws around the world which prohibit sexual harassment are more enlightened and recognize that both men and women may be harassers or victims of sexual harassment. It is important to note, most claims of sexual harassment are made by women.

1 Peer Commentaries in Green(200) and Schmidt (2002) Archives of Sexual Behavior 31,2002
2 The Sexual Offences Special Provisions Act,1998, section 3

Sexual harassment includes intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors.[3] In some contexts or circumstances, sexual harassment may be illegal. It includes a range of behavior from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault. Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many businesses, preventing sexual harassment, and defending employees from sexual harassment charges, have become key goals of legal decision-making. This may be illustrated by SBC Tanzania Ltd, the Producers of Mirinda, Pepsi, and Seven Up soft drinks who clearly state in their corporate citizenship as follows:

> *"We will not tolerate sexual, mental or physical harassment at the workplace. We expect incidents of harassment to be reported and dealt with appropriately by our Human Resources Department."*

Harassment situations

Sexual harassment can occur in a variety of circumstances. Often, but not always, the harasser is in a position of power or authority over the victim (due to differences in age, or social, political, educational or employment relationships). Forms of harassment relationships include:

- The harasser can be anyone, such as a client, a co-worker, a teacher or professor, a student, a friend, or a stranger.
- The victim does not have to be the person directly harassed but can be anyone who finds the behavior offensive and is affected by it.
- While adverse effects on the victim are common, this does not have to be the case for the behavior to be unlawful.
- The victim can be any gender. The harasser can be any gender.
- The harasser does not have to be of the opposite sex.
- The harasser may be completely unaware that his or her behavior is offensive or constitutes sexual harassment or may be completely unaware that his or her actions could be unlawful. (Adopted from the U.S. EEOC definition).[4]

In Tanzania, SOSPA has laid down grounds for sexual harassment as follows:

Section 135 - (1) Penal Code: Any person, who, with intent to cause sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intending that such word or sound shall be heard, or the gesture or object shall be seen, by that other person commits an offence of sexual assault.

(2) Where the charge for sexual assault under this section is related to a boy or girl under eighteen years; it shall be no defense to the charge that the boy or girl consented to the act constituting the assault.

3 Wikipedia, Free Encyclopedia

4 Wikipedia, Free Encyclopedia

***Quid pro quo* sexual harassment**

Quid pro quo means "this for that". In the workplace, this occurs when a job benefit is directly tied to an employee submitting to unwelcome sexual advances. For example, a supervisor promises an employee a raise if he or she will go out on a date with him or her, or tells an employee he or she will be fired if he or she doesn't sleep with him or her. *Quid pro quo* harassment also occurs when an employee makes an evaluative decision, or provides or withholds professional opportunities based on another employee's submission to verbal, nonverbal or physical conduct of a sexual nature. *Quid pro quo* harassment is equally unlawful whether the victim resists and suffers the threatened harm or submits and thus avoids the threatened harm.[5]

Sextortion in the workplace fits squarely within this definition of *quid pro quo* sexual harassment. Both involve someone in a position of authority who uses that authority to demand a sexual favor In exchange for a work-related benefit.

Positions of power

Sexual misconduct can occur where one person uses a position of authority to compel another person to engage in an otherwise unwanted sexual activity. For example, sexual harassment in the workplace might involve an employee being coerced into a sexual situation out of fear of being dismissed. Sexual harassment in education might involve a university student submitting to a professor's sexual advances in fear of being given a failing grade

In Tanzania, under the Prevention and Combating of Corruption Act of 2007,[6] any person being in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favors on any person as a condition for giving employment, a promotion, a right, a privilege, or any preferential treatment, commits an offence and shall be liable on conviction to a fine not less than one million shillings but not more than five million shillings or to imprisonment for a term of not less than three years but not more than five years or both.

A person in a position of authority commits rape in the following circumstances:[7]

- being in a position of authority takes advantage of his official position and commits rape on a girl or woman in his official relationship or restrains and commits rape on the girl or woman.
- being on the management or on the staff of a remand home or other place of custody, established by or under law, or of a woman's or children's institution takes advantage of his position and commits on any woman inmate of the remand home, place of custody.
- Being in the management or staff of a hospital takes advantage of his position and commits rape on a girl or woman.
- Being a traditional healer takes advantage of his position and commits rape on a girl or woman who is his client for healing purposes.
- Being a religious leader takes advantage of his position and commits rape on a girl or a woman.

5 Wikipedia, Free Encyclopedia
6 Section 27(sexual or any other favors)
7 SOSPA,1998, section 130(3) (a)ó(e)

A person attempts to commit rape[8] if

- with intent to procure sexual intercourse with any girl or woman, he manifests his intention by threatening the girl or woman for sexual purposes.
- Being a person of authority or influence in relation to the girl or woman applying any act of intimidation over her for sexual purposes.

Spousal sexual abuse

Spousal sexual abuse is a form of domestic violence. When the abuse involves forced sex, it may constitute rape upon the other spouse, depending on the jurisdiction, and may also constitute an assault.

In Tanzania, Sexual Offences Special Provisions Act (SOSPA) which brought about changes in various legislations did not fully acknowledge marital rape. Section 130(2) (a) of the Penal Code only talks of rape between a legally separated husband and wife. Thus, a wife who is still married cannot be raped whether or not she has consented to having intercourse with her husband or she has been forced to have sex in circumstances amounting to rape.

(Separated means and includes separation arranged by family or clan elders without the parties going to court or otherwise).

Underlying this position is the perception that a man cannot be said to rape his legal wife - a position that is supported by religious and cultural edicts. But is such a view compatible with the notion of consent required to engage in sexual intercourse under the act?

Sexual abuse of minors

Child sexual abuse is a form of child abuse in which a child is abused for the sexual gratification of an adult or older adolescent. In addition to direct sexual contact, child sexual abuse also occurs when an adult indecently exposes his genitalia to a child, asks or pressures a child to engage in sexual activities, displays pornography to a child, or uses a child to produce child pornography.[9]

In the Law of the Child Act, 2009, "child abuse" means contravention of the rights of the child which causes physical, moral, or emotional harm including beatings, insults, discrimination, neglect, sexual abuse and exploitative labour.[10] The Act prohibits sexual exploitation. It provides that a child shall not be engaged in any work or trade that exposes the child to activities of a sexual nature, whether paid for or not. It shall be unlawful for any person to use inducement or coercion in the encouragement of a child to engage in any sexual activity, prostitution or other unlawful sexual practices and pornographic performances or materials.

8 SOSPA 1998, section 132(2)
9 Wikipedia, Free Encyclopedia
10 The Law of the Child Act,2009, section 3

The Sexual Offences Special Provisions Act [11]provides that any person commits the offence of sexual exploitation of children in the following circumstances:

- knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate In any form of sexual activity or in any obscene or indecent, exhibition or show;
- acts as procurers of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show;
- induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse, or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;
- takes advantage of his influence over, or his relationship to, a child, to procure the child for sexual, intercourse or any form of sexual abuse or indecent exhibition or show;
- threatens, or uses violence towards, a child to procure the children for sexual intercourse or any form of sexual abuse or indecent exhibition or show,
- gives monetary consideration, goods or other benefits to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show.

11 Section 138 B

THE CRIMINAL JUSTICE SYSTEM

We have already seen that sextortion is a new terminology used to illustrate a situation which is taking place in the community at large, where sex, and not money, is used for corruption. In this part we are going to examine sextortion in the Country's Criminal Justice System.

Available Laws, Ingredients and Penalties

The Tanzanian laws dealing with cases of sextortion are the Penal Code [CAP 16 R.E.2002] and the Prevention and Combating of Corruption Act, 2007. The latter law is gender-neutral meaning that both men and women may be victims or offenders.

Table 1. Incidences of sextortion under the available law and the penalties:

THE PENAL CODE [CAP 16, R.E.2002]	INGREDIENTS OF THE OFFENCE	PENALTY
Section 130(3) (a)	A person in a position of authority, takes advantage of his official position, and commits rape on a girl or a woman in his official relationship or wrongly restrains and commits rape on the girl or woman	Section 131(1) Thirty years imprisonment with corporal punishment and an order for compensation for the injuries sustained by the victim.
Section 130 (3) (b)	A person on the management or staff of the remand home or other place of custody, established by or under the law, or of women"s or children's institutions, takes advantage of his position and commits rape of any woman inmate of the remand home, place of custody or institution	Section 131(1) Thirty years imprisonment with corporal punishment and an order for compensation to the victim for the injuries suffered.
Section 130(3)(c)	A person on the management or staff of a hospital, takes advantage of his position and commits rape on a girl or woman	Section 131(1) Thirty years imprisonment with corporal punishment and an order for compensation to the victim for the injuries suffered.
Section 130(3)(d)	A traditional healer takes advantage of his position and commits rape on a girl or woman who is his client for healing purpose	Section 131(1) Thirty years imprisonment with corporal punishment and an order for compensation to the victim for the injuries suffered.
Section 130(3)(e)	A religious leader takes advantage of his position and commits rape on a girl or woman	Section 131 (1) Thirty years imprisonment with corporal punishment and an order for compensation to the victim for the injuries suffered.
Section 96(1)	A person employed in the public service does or directs to be done in abuse of authority of his office any act prejudicial to the rights of another.	Three years imprisonment but the prosecution must be with the consent of the Director of Public Prosecution.

The Prevention and Combating of Corruption Act, 2007, section 25	A person in a position of power or authority exercises his power or authority to demand or impose sexual favours on any person for giving employment or promotion, or a right , or privilege or any other preferential treatment	Fine not less than 5 million shillings or to imprisonment for a term not less than three years but not more than five years or to both.

Ending Sextortion

One way of ending sextortion is reporting the incident to the relevant authorities for prosecution and penalty.

The Criminal Procedure Code Act, [CAP 20 R.E.2002] provides for the ways in which the offenders can be arrested and brought to justice and the courts vested with power to hear and determine cases involving sextortion. The Court system in Tanzania is comprised of the Magistrates Courts, the High Court and the Court of Appeal. At the lowest level of the ladder, there are the Primary Courts. Above the Primary Courts we have the District Courts and the Courts of Resident Magistrate. The High Court follows, and lastly at the apex, is the Court of Appeal. The table below shows the Court system in Tanzania and the establishing law.

Table 2. The Court System in Tanzania and the establishing laws:

The Courts	The Establishing Law	Where and the number
The Primary Courts	The Magistrates Courts Act [CAP 11 R.E. 2002] section 3 (1)	In every geographical district of the country. They can be more than one in a district.
The District Courts	The Magistrates Courts Act, [CAP 11 R.E.2002] section 4(1)	One in every geographical district of the country
The Resident Magistrates Courts	The Magistrates Courts Act [CAP 11 R.E.2002] section 5(1)	Established by the Chief Justice in an area specified in the establishing order. However, the trend has been to establish one in each geographical region of the country.
The High Court of Tanzania	Established under article 108(1) of the Constitution of the United Republic of Tanzania	One in the whole country but it has 12 zones and 3 divisions.
The Court of Appeal of Tanzania	Established under the Constitution of the United Republic of Tanzania, article 117(1)	One for the United Republic of Tanzania but it sits in circuits mostly in the High Court Zones and in Zanzibar.

For an offender who committed the offence of sextortion to be prosecuted, the victim must lodge a complaint. This is the initial step to put the offender into the criminal justice system. For those living in the rural areas or far from the police stations, the complaint must be made on oath to any of the following persons: the magistrate, the Ward Secretary or a Secretary of a Village Executive Officer. The informant victim or any other person on his/her behalf must furnish sufficient information giving reasonable grounds for issuing a warrant to arrest the offender. The Ward Secretary or the Secretary of a Village Executive Officer must, after the arrest of the offender, refer the complaint to the police for investigation and final decision for prosecution. When the offence is committed in towns where the police stations are within reach, the complaint is made directly to the police station, where it is recorded and

dealt with in accordance with the Police General Orders. The police have specific guidelines for dealing with sexual offences and other forms of domestic violence. While the victim, after reporting the commission of the offence, awaits for the Investigating Officer to take charge of the investigation of the case, the attending officers who receive the complaint are required to listen and comfort the victim. The victim also has a right to be informed by the police of the police procedures and case confidentiality. The guidelines also provide for the details which are included in the Police Form 3 (PF3) which is supposed to be filled in by the examining doctor where such examination must be carried out. For the police to do a successful investigation, the most important thing for the victim is to collaborate with the police by giving details of the circumstances under which the offence was committed, and naming the witnesses who have relevant information concerning the commission of the offence. After the investigations are through, and the police are satisfied that they can make out a case against the offender, the case is taken to court for prosecution. It is the duty of the victim to attend court and give evidence as instructed by the police or the court, and to assist in locating the witnesses to support her case.

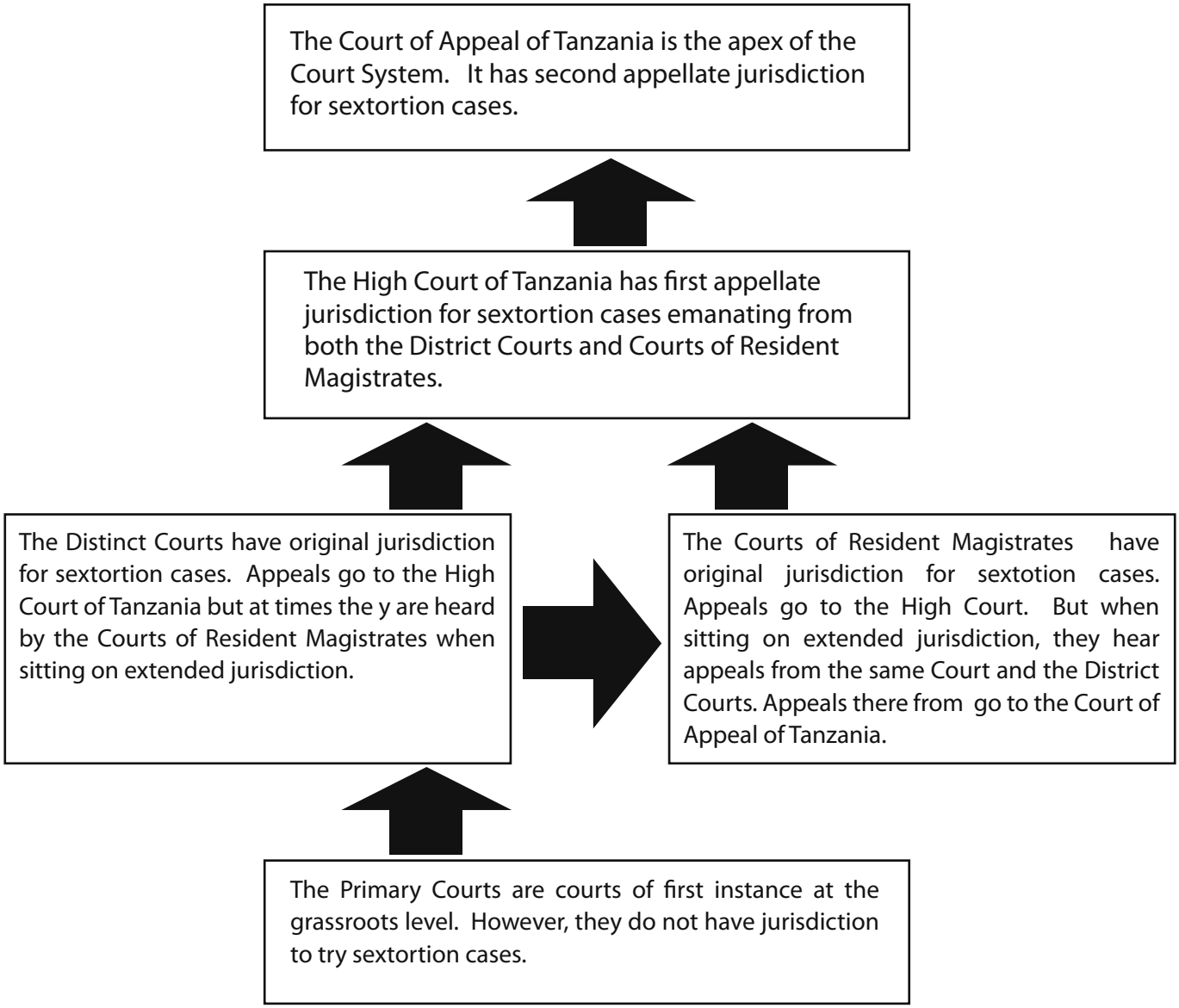
Courts Having Jurisdiction to Try Sextortion Offences

The District Courts are manned by District Magistrates holding a diploma in law, while the Courts of Resident Magistrate are manned by Resident Magistrates whose qualification is a Bachelor of Laws Degree. Some Resident Magistrates also work in the District Courts. The future plan is to have Resident Magistrates in all the District and Primary Courts. In terms of section 42(1) (a) of the Magistrates Courts Act, [CAP 11 R.E. 2002] the powers of District Courts and Courts of Resident Magistrate are limited and their practice and procedure is regulated by the Penal Code and the Criminal Procedure Act.

Part VI of the Criminal Procedure Act [CAP 20 R.E. 2002] contains general provisions regulating trials. The first schedule to CAP 20 lists the offences and the courts conferred with jurisdiction to try them. Section 164 (1) of the Criminal Procedure Act, CAP 20 specifically confers jurisdiction to the District Courts and Courts of Resident Magistrates to try the offences falling under chapter XV of the Penal Code. These are offences against morality and they include rape, sextortion and all related offences as indicated in table 1 above. Section 43(1) of CAP 11 and section 359 of the Criminal Procedure Code, CAP 20 confer first appellate jurisdiction to the High Court for offences emanating from the District Courts and the Courts of Resident Magistrate. The High Court has power under section 45 A of the Magistrates Courts Act, CAP 11 to transfer any appeal to the Court of Resident Magistrate to be heard by a Resident Magistrate with extended jurisdiction. Likewise, section 6(7)(a) of the Appellate Jurisdiction Act [CAP 141, R.E.2002] vests second appellate jurisdiction to the Court of Appeal for cases emanating from the District Courts and Courts of Resident Magistrate and Courts of Resident Magistrate exercising Extended Jurisdiction. Except for the severity of the sentence, the jurisdiction of the Court of Appeal on a second appeal is limited to matters of law only.

The diagram below shows the criminal justice system in Tanzania and the Courts having original and appellate jurisdiction over sextortion cases. The Primary Courts are courts of first instance at the grassroots level, but they are not vested with jurisdiction to try sextortion cases.

The Criminal Justice System in Tanzania



THE CIVIL JUSTICE SYSTEM

In the jurisprudence of Tanzania, sextortion is commonly penalized under criminal laws. However, there are also, to a limited extent, some sanctions available under civil and administrative laws. The contents of this section will be devoted to the civil remedies available under civil and administrative processes only.

A victim of sextortion may, in addition to filing a criminal complaint through the criminal process in court, institute a separate civil liability suit for damages in tort. This is possible under **The Civil Procedure Code, Chapter 33 of the Laws** and **The Magistrates Courts Act, Chapter 11 of the Laws.** The claim is for monetary damages arising from the injury suffered by the victim. Such a suit can be instituted in the District Court or in the Court of the Resident Magistrate or the High Court, depending on the amount of money claimed. (**See Diagram 1, The Civil Court Sytem).**

The victim has to adduce evidence in court to prove the seriousness of injury suffered and that she is entitled to the monetary damages.

The damages recoverable may be both general and special or either one of them. The amount of general damages payable is at the court's discretion and is subject to the evidence adduced before the court, such as the seriousness of the injuries (moral or physical) sustained, the loss of reputation and the victim's standing in the community and such other similar considerations. In assessing the amount of special damages payable, the court would normally take into consideration the actual monetary expenses the victim has incurred, such as payments for medical treatment and transportation to a medical facility. The special damages have to be strictly proved by production of documentary evidence including hospital receipts, invoices, receipts for transport costs paid, et cetera.

Where either the victim or the offender is dissatisfied with the decision reached by the court, such party may appeal to the High Court and finally to the Court of Appeal. Where the final verdict is in favour of the victim, the monetary award has to be either directly paid to the victim (decree holder) by the defendant/judgment debtor; otherwise through execution whereby the latter's properties may have to be levied against by a court broker in favour of the decree holder.

Victims wishing to pursue their complaints through the administrative channels rather than through courts of law may have an easier task because the system is much more simplified than in suits through the courts. The complaint to an administrative tribunal can be made in writing or orally depending on the procedures for the particular tribunal. Where orally made, an officer of the tribunal will reduce it into writing.

The administrative remedies are available in most administrative tribunals at public work places and within professional associations such as **The Medical Council of Tanzania** which is the disciplinary authority for irate medical practitioners guilty of *"infamous conduct"* in any professional respect, including sextortion, under **the**

Medical Practitioners and Dentists Act, Chapter 152 of the Laws. Similarly for the **Advocates Committee** which oversees allegations of *"misconduct against advocates",* under **The Advocates Act**, Chapter 341 of the Laws.

After a hearing, if the offender is guilty he will be subjected to administrative penalties such as a censure, suspension, demotion and in the professional arena such as for the advocates and the medical practitioners, the offender may lose his practicing licence as well.

If a party is not happy with the decision of the administrative tribunal, one may prefer an appeal to the High Court and further opportunity is available for a second appeal to the Court of Appeal. (**See Diagram 2, Complaints Against Offenders in Sextortion.)**

The Challenges

Despite having in place the relevant laws, an established Court system and other administrative channels to adequately address the problem of sextortion, there are still a number of challenges, which, at times negate the good laws and the establishment already in place.

Such setbacks include **ignorance** of the laws and the opportunities and the remedies available to the victims of sextortion. Due to ignorance, most of the victims are not aware of their rights. At times, those who know their rights might not know how and where to seek the remedies. Another setback is **the cost of legal services of advocates** which is relatively expensive and beyond reach of the ordinary Tanzanian. The court room and the legal process is in the confines of advocates and some other trained lawyers generally. It is such legal minds who know the rules of the game in courts, such as the formats of documents to be lodged, the type of evidence required and the damages to be claimed. There are a few Legal Aid providers available from some Non-Governmental Organizations (NGOs) but most of them are overstretched. Such NGOs include The Tanzania Women Lawyers Association (TAWLA) and The Women Legal Aid Centre (WLAC). A list of other NGOs, agencies and religious institutions in Tanzania dealing with women's rights and challenges, sextortion included, is provided for elsewhere in the Toolkit under "**Resources Available".**

Apart from the widespread ignorance and the shortage of free legal aid services to the victims, the problem is further compounded by the elements of corruption in the society. At times, when a victim manages to file a case in court or lodge a complaint with the relevant administrative tribunal, the progress and the finalization of the case or complaint might be delayed or the ultimate decision unfairly made to the detriment of the victim, if the corruption sought has not been realized. The corruption sought here might be either in monetary terms or sexual advances. These challenges often present serious setbacks which negatively impact the human rights of the victims.

Normally, the victims lack the confidence to singly come out and speak about the violence perpetrated against them and, as a result, they might be discouraged to take any action against the offenders. Due to these setbacks

quite a substantial number of offenders go free and unpunished. This type of environment encourages offenders to repeat similar wrongs to other victims.

The Tanzania Women Judges Association believes that a change of mindset is necessary in order to effectively address the above challenges with a view to bring about change. It is therefore necessary to initiate intensive public awareness programmes throughout the country. Currently, compensation payable to victims is inadequate. At times victims do not receive the compensation awarded where the offenders are poor with no means to pay. With the public sensitization programmes in place the government should, in collaboration with non-governmental organizations, have in place a mechanism through which adequate and timely compensation and other remedies will be made available to the victims of sextortion.

Mindset shifts towards respect for the dignity of women and other vulnerable groups in the society and goodwill from the government and other stakeholders are necessary In the fight against sextortion.

THE CIVIL COURT SYSTEM IN TANZANIA

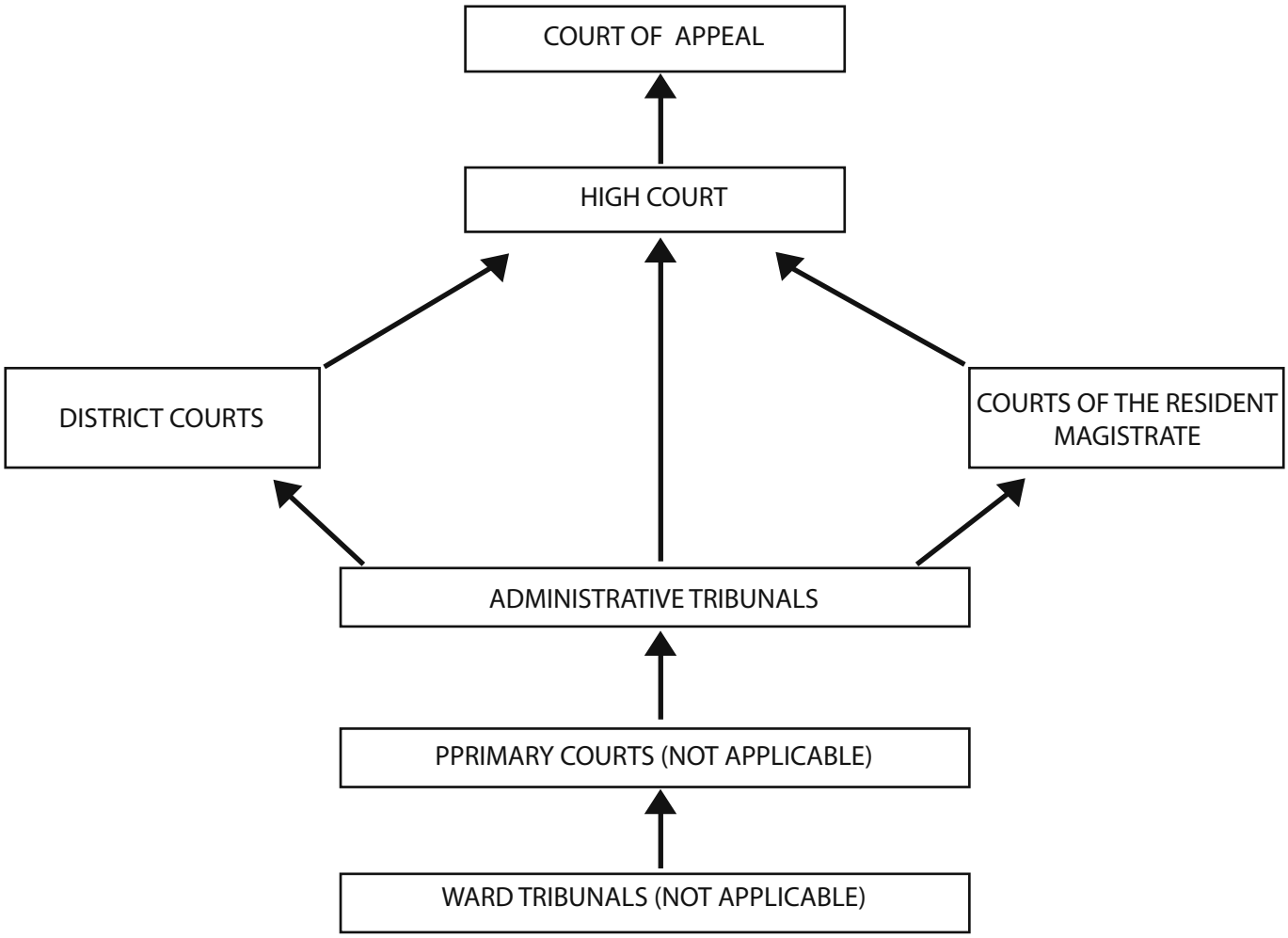


DIAGRAM 1

NB: Subject to the establishing legislations, appeals from some of the Administrative Tribunals go to the High Court and the Court of Appeal.

COMPLAINTS AGAINST OFFENDERS IN SEXTORTION

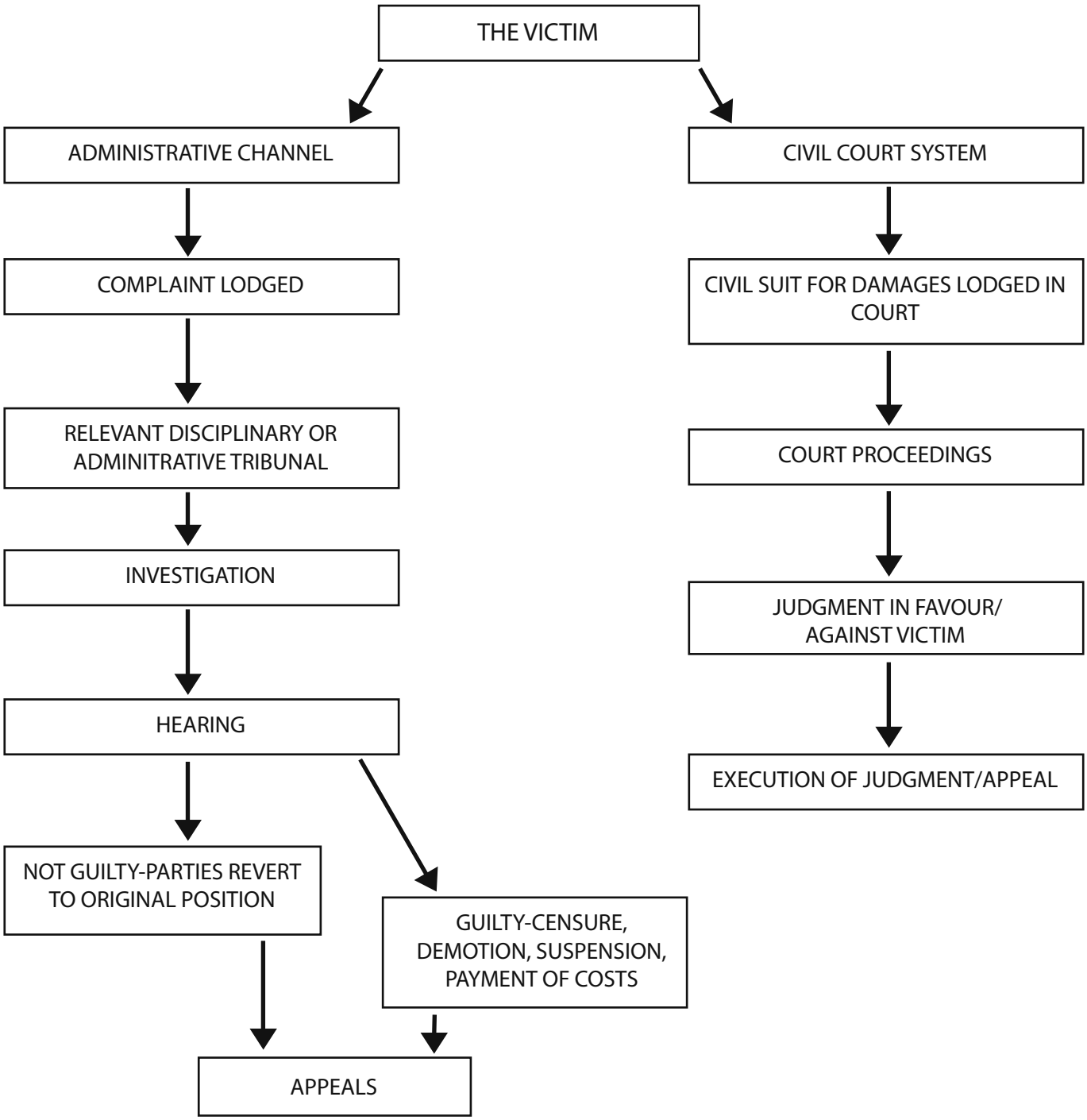


DIAGRAM 2

CHALLENGES IN THE INVESTIGATION AND PROSECUTION OF SEXUAL OFFENCES SUCH AS SEXTORTION

Introduction

Rape and other sexual offences are among the most distressing, disturbing crimes in our society, and such cases often present complex legal challenges for both investigators and prosecutors. Sex-related offences are universal phenomena that take place in every society. Sexual offences often take the form of sexual violence, which sometimes causes severe and irreparable damage to the physical and mental health of the victims.

Mainland Tanzania is seen as a pioneer amongst the East African countries to legislate specifically against sexual and gender based violence. This feat was accomplished by the enactment of the Sexual Offences (Special Provisions) Act of 1998[1], (the SOSPA) that made amendments of a number of specific legislations. The enactment of SOSPA was without doubt a strategic government intervention to address the increasing problems of sexual offences and to respond to public outcry on the perceived inefficiency of the justice machinery in dealing with sexual offences.

The amendments of the Penal Code[2] and Evidence Act[3], Children and Young Persons Act[4], Criminal Procedure Act[5] and the Minimum Sentences Act[6] by SOSPA expanded the content, procedural framework and the gist of the following forms of sexual offences, namely: rape, attempted rape, abduction, abduction of girls under sixteen, sexual assaults, defilement, sexual exploitation, sexual abuse, indecent sexual abuse, sexual harassment, procuring prostitution, trafficking of persons, procuring rape, permitting defilement, detention in premises with intent, or in a brothel, prostitution or persistent soliciting, conspiracy to induce unlawful sexual intercourse, attempts to procure abortion, unnatural offences and incest.

A wide variety of sex-related offences take place in different circumstances and social settings and target victims indiscriminately. Of all these crimes, rape is considered to be the gravest form of human rights violations. That is why even under international law, sexual violence against women and girls in situations of armed conflict constitutes a clear breach of international law. Perpetrators of sexual violence can be convicted for rape as a war crime, a crime against humanity, or an act of genocide or torture, if their actions meet the elements of each[7].

The Context

As we celebrate the 10 years of SOSPA, it is imperative that we not only assess the impact of the laws addressing sexual offences in Tanzania but also review the criminal justice system and how it serves its intended purpose of protecting people from invasion of their privacy, dignity and respect.

1 Cap 101; originally Act No. 4 of 1998
2 Cap 16, R.E. 2002
3 Cap 6 R.E, 2002
4 Cap 13 R.E, 2002
5 Cap 20 R.E, 2002
6 Cap 90 R.E, 2002
7 Prosecutor v. Akayesu ICTR-96-4-T September 2, 1998

The object of criminal investigations and criminal prosecution is not only to secure convictions but also to serve the interests of justice. The prosecutorial role is distinctive from the investigative role, and the great contribution that the prosecutor brings to the investigations is a professional detachment and objectivity that also provides a second eye and an analytical stance to the evidence gathered. It is pertinent to also understand that investigative functions include gathering, keeping and analyzing crime information in the process of case building.

The investigative powers for sexual offences vest mainly with the Tanzanian Police Force. Investigators are fundamental for the functioning criminal justice machinery. The police, according to the Police Force and Auxiliary Act[8] and the Criminal Procedure Act[9], and Police General Orders (PGOs) may employ a number of investigative techniques to detect, investigate and uncover the commission of a crime, for example, use of undercover operations, controlled delivery, and use of informers, surveillance and interception. They also have powers to search and seize property suspected of being used in the commission of a crime and may take such measures as may be necessary for the discovery and arrest of the offender.

Various studies have revealed that investigation of sexual offences, particularly rape cases, requires sympathy and empathy of the traumatized victims. The investigator must try to establish rapport with the victim, must impress the victim that he is concerned not only with the arrest and conviction of the offender but with the wellbeing of the victim. Proper investigation is imperative for justice delivery to the victims.

The investigator's role is to investigate after receiving or getting information about commission of a crime by seeking evidence while addressing the ingredients of the offence as stated by the applicable law. It is the duty of the investigator to interview witnesses and prepare their statements, which then form part of the docket file and facilitate all other evidence including attaining forensic evidence and expert evidence where it is needed. The investigator may also prepare a sketch plan or map of the scene of crime and is responsible for storing safely all the relevant exhibits. Therefore it is imperative that the investigator clearly understand the context and the components of the offence. Matters such as consent, penetration, and age of the victim, for instance, are critical to establish a prima facie case for a charge of rape. Therefore evidence to prove these matters Is essential and the investigator needs to seek such evidence. Investigators are expected to be skilled and well versed in investigation techniques to create dockets that have prosecutable cases.

Prosecutors are expected to provide the necessary guidance to facilitate a more professional approach to criminal investigations, this is stressed in the National Prosecution Services Act[10] and prosecutorial functions are further outlined in the Criminal Procedure Act, CAP 20. The prosecutor has the role of reviewing the evidence as contained in the investigation file, and sanctioning charges where he finds there is a prima facie case to warrant prosecution or that public interest necessitates the case to be heard in court. In making a determination to prosecute cases, the prosecutor works under the direction of or with delegated powers from the Director of Public Prosecutions

8 Cap 322 R,E 2002
9 Cap 20 R.E 2002
10 Act no. 1 of 2008

and is guided by three main principles[11] namely-

a. The need to do justice
b. The need to prevent abuse of legal process; and
c. The public interest

A public prosecutor is expected to have knowledge and skills on the content and context of the laws, understand the offence and then satisfy himself that the evidence contained in the docket file amply covers the ingredients of the particular offence. For sexual offences particularly regard must be made to the forensic evidence, issues related to consent and that of children of tender years. On penetration, in the cases of rape, the law is clear and this has been reaffirmed in many cases including that of ***Omary Kijuu vs. the Republic, Criminal Appeal no. 39 of 2005*** (unreported). In that case, the appellant had been charged and convicted of rape pursuant to section 130 (1) (2) (b) and 131 of the Penal Code, CAP 16, R.E 2002. On appeal, his main contention was that the evidence produced in court did not substantiate that there was any penetration, as the words contained in the PF3 that what was found were "minor bruises at the genital area and some discharges from the anus" were not sufficient to prove penetration warranting prosecution for rape.

The Court of Appeal in its deliberation reiterated the fact that Section 130 (4)(a) of the Penal Code, CAP 16 as amended by SOSPA provides that:

> *"For the purposes of proving the offence of rape - penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence."*

The role of the prosecutor in handling cases (including sexual offences) includes the following;

(a) study the file and evaluate evidence presented or contained in the file - this includes researching such cases
(b) interview potential witnesses with a view to developing the evidentiary profile to use, if the case goes to trial
(c) prosecute in the courts
(d) file documents in appropriate courts and complete registry formalities
(e) ensure compliance with a magistrate's orders as appropriate
(f) obtain witness summons, removal orders, arrest warrants, and accused summons as the case may be
(g) plan the conduct of the case and synchronize witnesses and exhibits
(h) conduct preliminary hearing
(i) present and examine witnesses for the prosecution case
(j) tender exhibits, if any
(k) cross examine witnesses for the defence
(l) make final submissions
(m) in case of a conviction, present previous criminal record if any

11 As outlined under Article 59B of the Constitution o f United Republic of Tanzania 1977 and the National Prosecutions Service Act, 2008

(n) address the court on sentence and mitigation

(o) ensure the appropriate documents are obtained for the execution of the sentence - commitment warrants, order for payment of fine, compensation etc

(p) ensure matters relating to exhibits (disposal), forfeitures, and costs are handled

(q) Document the outcome of the case, complete the requisite forms and return the file to the registry.

(r) Constantly review the case at each stage and take appropriate action including consulting senior officials in case of decision to discontinue the case or to call for further investigation or additional witnesses.

(s) Prepare necessary documentation in case of initiation of appeals

The Situation on the Ground

There is a general consensus that the conviction rate of sexual offences is rather low as clearly depicted by the statistics made available to us by the Department of Criminal investigations and Attorney General's Chamber zonal offices. Table 1 shows that rape cases take the majority of sexual offences, about 92%, and Table 2 shows that about 31.2% of the rape cases are still pending in court, while17% fall out of the system being tagged undetected, no further action and no offence disclosed. Only 15% of cases of rape brought to court end up in conviction.

Unfortunately the table does not show the number of investigations conducted and those sanctioned for prosecution. However, from the report of the Law Reform Commission of Tanzania on the Review and Drafting of the Law of the Proposed Provisions for amendment of the Sexual Offences Laws as amended by SOSPA 1998, February 2008 pg 52, making an analysis of statistics received from the Police headquarters, based on 1999, 2006 and 2007 data, we are informed that approximately 40.3% of cases reported to the police were taken to court for prosecution. Records further show that 48.9% of all cases which were reported to the police during the period were dropped for lack of evidence among other things.

Table no. 1.0 Sexual crimes 2004-2008

Year	Total No of Cases	Age and gender of victims													
		Rape							Unnatural offences						
		No. of cases	Age						No. of cases	Age					
			Male			Female				Male			Female		
			0-15	16-25	26+	0-15	16-25	26+		0-15	16-25	26+	0-15	16-25	26+
2004	5109	4621	0	0	0	2493	1905	223	488	194	53	22	167	37	15
2005	4417	3997	0	0	0	2156	1648	193	420	167	45	19	144	32	13
2006	4790	4278	0	0	0	2308	1764	206	512	204	56	24	171	40	17
2007	9461	8894	0	0	0	4799	3668	427	567	226	63	27	190	45	16
2008	8734	8105	0	0	0	4374	3343	388	629	251	70	30	211	50	17
Total	32511	29895							2616						
%															

Data from Police Force Headquarters - Department of Criminal Investigations

Among many reasons cited for such a big drop out of cases without prosecution includes lack of cooperation

from victims (especially on rape and particularly when the matter is negotiated between the victim and the assailant), false reporting, corruption and ignorance of law.

Table 2 Sexual offences: Cases Process/Status 2004-2008

Year	Total cases	Rape	P/C	U/I	U	NOD	NFA	Conv	Aqt	U O cases	P/C	U/I	U	NOD	NFA	Conv	Aqt
2004	5109	4621	1105	902	978			929	707	488	107	95	94			115	77
2005	4417	3997	1095	569	777			1497	59	420	115	61	81			157	6
2006	4790	4278	1215	1375	829			632	227	512	145	195	87			63	22
2007	9461	8894	3109	3755	983			741	306	567	198	253	62			40	14
2008	8734	8105	2824	2642	1517			805	317	629	258	229	56			62	24
Total	**32511**	**29895**	**9348**	**9243**	**5084**			**4604**	**1616**	**2616**	**823**	**833**	**380**			**437**	**443**
%		**92.0**	**31.2**	**30.9**	**17.0**			**15.4**	**5.4**	**8.04**	**31.5**	**31.84**	**14.5**			**4.4**	**16.9**

Data from Police force Headquarters- Department of Criminal Investigations

Table key

UO- Unnatural offences
P/C - Pending Court cases
U/I- Under investigation
U- Undetected
NOD- No offence disclosed
NFA- No Further Action
Conv.- Conviction
Acq- Acquitted.

Statistical evidence from the Attorney General Chambers offices across the country shows a similar trend, especially for the period under surveillance that is April 2008 - November 2009. This related to Rape, Unnatural offences, Attempted Rape, Incest by Male, Abduction of a girl under 16 years, Grave Sexual Abuse, Statutory rape and impregnating a girl.

In Tanga zonal office, they received 88 police case files, (69 rapes), 75 charges were sanctioned, of which 11 cases sanctioned in the High Court and 58 in the District courts and Court of Resident Magistrate. 5 cases withdrawn under section 91 (1), accused were acquitted in 6 cases, 10 cases were discharged under section 225 of the CPA and in 3 cases the accused were convicted. The other 64 are still pending in court. They also dealt with appeals, of which 5 appeals were allowed and 2 appeals dismissed, in 1 appeal a retrial was ordered and 3 appeals are in the hearing stage.

For Arusha, from 4th August 2008 to November 2009, they had received 124 files, related to Rape (87), unnatural offences (32), incest by males, Attempted rape and Sexual exploitation of which 122 charges were drawn and cases prosecuted in court, of which 32 cases have been finalized where there is only 1 conviction, 3 charges were withdrawn under S. 91(1), 2 acquittals and 26 charges were dismissed under section 225 of the CPA. 90 cases are still pending in court. In Tabora, they received 47 files related to sexual offences from March 2009 to November

2009 and only 37 cases were instituted in court, of which 4 charges have been withdrawn, 3 convictions, 2 acquittals and 2 dismissals under section 225 of CPA and the remaining 26 are pending hearing in court.

Challenges

Because sextortion is a new term, there is no existing data base of information about cases involving sextortion as such. However, the data available for other types of sexual offences offer insights into the challenges in investigating and prosecuting sextortion. One of the biggest challenges in investigation and prosecution of sexual offences generally is the attrition rate. Data from the police and from the AGC offices show that there is a significant number of cases that do not make it through the criminal justice system through what is termed undetected, or through withdrawal, dismissal or non-sanctioning of charges and returning the file to police, where it is just dropped. . The attrition rate can be discerned according to the proportion of cases where there has been a conviction, or the total number of sexual offences cases reported to the police, or the proportion of cases convicted out of the total number of cases brought to trial. The report to conviction rate seems to be lower than the trial to conviction rate. Conviction rates are lower when the statistics include cases that were reported, but not investigated (for example, disposed of at reporting or early on in the investigation stages of the case). They may also be calculated with or without the number of convictions overturned on appeal. All this may cause miscarriage of justice if not checked and dealt with.

Data seems to clearly show that sexual offences are finalized in a number of different ways, these include terms such as

- Undetected
- Undetected- complainant not traced
- Withdrawn- and no consequences
- Nolle Prosequi
- Dismissals by the courts
- Acquittals

When addressing matters related to investigations of sexual offences, the main challenge which negates the process of investigation and sometimes prosecution is lack of cooperation from victims. As one can see from Table 1 and 2 most of the victims of rape are below 25. It is alleged that in many cases where rape is reported it is the parents or guardians who do so, not knowing that the alleged perpetrator was the boyfriend of the victim. Sometimes parents may settle the matter with the perpetrators, and once there is an agreement amongst them, the victims are reluctant to continue or collaborate with investigations or prosecution.

The other challenge that investigators and prosecutors meet in their work in this area is the ignorance of the victims about the law on what constitutes rape, sexual assault etc. Therefore many incidences are not reported and, where they are reported, the victims can easily be convinced to withdraw allegations or change their

statements rendering the evidence weak and therefore the case hard to prosecute.

The issue of knowledge of the law is also important for the investigators. During investigations, there is the issue of police discretion where they are expected to establish whether an incident is criminal or warrants investigation in ways that replicate traditional interpretations. Therefore the decision to continue with investigation or the modalities to use in investigation are dependent on the investigator's value and knowledge of what constitutes real rape, for instance, what constitutes a criminal activity as opposed to what the investigator might perceive to be acts that occur naturally within intimate or social interactions.

The process of reporting, forensic medical examinations, statement taking, investigations/evidence gathering and arrest of accused persons are also key attrition points in our criminal justice system and important challenges faced in the system. The ability to find the suspect/ accused, and in some cases the complainant, has a great impact on the ability of the criminal justice system to assist complainants. Without the accused the case cannot proceed. Other aspects of the investigation, including the ability of investigating officers to collect appropriate and relevant evidence for the prosecution of sexual offences, also present challenges.

The quality of medico-legal examinations by medical practitioners is also similarly critical to the effectiveness and integrity of investigations and prosecutions. The medico-legal examination often forms a crucial aspect of sexual offences cases and therefore requires detailed attention to injuries and complaints made by the survivor at the time of the examination. When these examinations are not properly documented or are incomplete or inconclusive, the tenacity of the evidence and the strength of prosecution can be severely compromised.

Although guided by the provision of the laws, which amplifies ingredients of the offences, it still remains the discretion of the investigators on whether a complaint Is regarded as a sexual crime, and for the prosecutors to determine whether there is enough evidence to establsh a prima facie case for sanctioning of the charge. It is thus important to understand and assess the factors and elements used by police and prosecutors to determine whether the case is unfounded or worthy of investigation and prosecution.

- For example, what they believe they are expected to do by law in terms of substantive definitions and evidentiary procedures
- The factors important to criminal justice agents in deciding whether to arrest, investigate or prosecute a sexual offence case. Factors that are considered to be important in producing successful judicial outcomes
- Investigation and prosecutorial methods, strategies and policies applied and considered useful in processing sexual offences cases
- Factors that limit or hamper effective investigation and prosecution of sexual offence cases, including infrastructural/material, procedural, circumstantial and personal obstacles.

The other challenge is related to the limited resource capacity of investigators - in terms of human resources, time, funding and materials to enable them to ably investigate such offences. Sexual offences investigations require patience and ability to work with the victim so that you can get the evidence and also ensure that her or

his dignity Is intact. Time is essential, which is a challenge to most investigators who have a workload of other matters to attend to since we are yet to have specialized investigators for sexual offences. Lack of transport and essential materials also limits the work of the investigators and sometimes undermines efficiency.

Initial and early responses of police officers, their skills and expertise as investigators and evidence gatherers, as well as their treatment of complainants are vital elements in criminal justice system responses.

The accessibility of investigating officers, high case loads and the extent to which investigating officers are qualified to investigate sexual offence cases are contributing factors to the quality of their investigations. Information regarding the status of a case, including of an arrest, is difficult to establish. Statement taken by the police is also problematic, with dockets containing often vague victim statements, which not only contain irrelevant information and details, but do not even set out the basic elements of the offence.

There is also the fact that as a country we have a weak social welfare system which does not adequately respond to the challenges in our social environment. Victims of sexual offences require support and intervention from social welfare to provide them with the necessary support, guidance and referrals to not only deal with their traumatic experience but to prepare them for the legal process. The lack of an effective social welfare system has rendered it impossible to deal with victims of human trafficking, child abuse and exploitation and other sexual offences in a more professional manner. This is dire especially in cases of incest by male, for instance, whereby when the accused is the caregiver, it becomes difficult to find alternative care facilities for the victim children or those who were under the care of the accused.

Prosecutors have to sometimes contend with poor quality of investigations, poor written statements, unavailability of police case files, unavailability of witnesses to testify in court, unavailability of key exhibits or forensic expert witnesses. There is also the fact that PF3s are sometimes not very helpful due to the way they are written in an inconclusive manner. There are such examples as a PF3 stating "dangerous harm caused by a male genital organ". Or a PF3 stating "male sperms not detected," but also "dangerous harm." Such narrations do not effectively assist in strengthening of a case. There are cases where doctors refuse to appear in court or delay submission of the PF3, leading to many court adjournments and ending up in courts dismissing the case and discharging the accused under S 225 of the Criminal Procedure Act, CAP 20.

Prosecutors have also to contend with reluctant witnesses, and sometimes the complainant who might fear harassment in court, especially when the issue of past sexual history of the victim is admissible in evidence during the trial. Victims may feel such possible questioning of their character is a continuation of abuse and refuse to come to court for fear of being embarrassed during cross examination. There is a need to address this which will in effect also go a long way to reduce secondary victimization that normally leaves victims with a sense of betrayal by the justice system.

There is also the fact that, because some prosecutors have limited skills in prosecuting cases, in some cases analysis of

evidence and case building is weak and, after sanctioning charges, it may lead to withdrawal of charges under Section 91 (1) of CPA after review of the evidence by more experienced prosecuting attorneys.

Studies have revealed that the success of a rape complaint is consistently based on six predictors (see Adler, Z, Rape on Trial, (1987)):

- The victim's sexual inexperience;
- Her respectability;
- Absence of consensual contact with the perpetrator;
- Resistance and injury;
- Early complaint; and
- A lack of acquaintance with the accused.

As these factors are generally absent in cases of spousal rape, investigators find it difficult to investigate such allegations, even if the spouses are separated. In most cases such a docket will end up without sanctioning due to the fact that the investigation did not concentrate on how to fill the gaps in terms of the elements of the offence. This failure is mainly due to how an investigator or prosecutor perceives marital rape, whether they understand it is rape, and whether they know how to establish that it fulfills the elements of the law.

Sexual offences are often perpetrated in the absence of independent observers who could substantiate the victim's story. The victim is often emotionally or physically traumatized, and the crimes are often degrading or involve a betrayal by a perpetrator who is trusted.

Anotherr challenge is data compilation and management. This makes it difficult to carry out any meaningful research to facilitate better planning and programme design for both investigators and prosecutors. Data is scattered, unmanaged and inconsistent due to the fact that we do not have an effective and integrated system that would assist in generation, analysis and use (management).

One cannot identify challenges faced by prosecutors in the handling of sexual offences cases without also highlighting some concerns related to how the judiciary in some cases adjudicates sexual offence cases. In some cases, there may be concern that a judicial officer's individual perception led to a legal interpretation in accordance with that personal view.

Responding to Challenges

The National Prosecution Services Act, No. 1 of 2008 expounds on the necessity to separate investigation and prosecution services. This process is popularly known as Civilianization of Prosecution Services. The purpose of this is to clearly define and strengthen the roles of the two institutions so that they concentrate on implementing their core functions. The role of the prosecution being to prosecute criminal cases fairly and effectively so that

the investigating organs are not seen to be the judges of their own cause - *nemo judex in causa sua*. We see this as an opportunity to improve the management of sexual offences, because the process will lead to more specialized modalities for criminal investigations, which could include sexual offences, and also to specialization in the prosecution services.

The Civilianization of Prosecution Services will also concentrate on skills development for prosecutors and, through the agencies for investigation, for investigators. This is also another opportunity to ensure there is a focus on skills enhancement for prosecutors and investigators in the area of sexual offences and particularly on new trends in commission of these crimes, including electronic modalities.

Civilianization of Prosecution Services also aims at having legally trained lawyers to prosecute cases at District Courts and Courts of Resident Magistrates in all the regions and districts of Tanzania. This is also a good opportunity that can lead to better analysis of evidence and guidance in evidence gathering, which could consequently ensure more well investigated and researched cases and thus more prosecutable cases.

Prosecutors also advise the investigators on cases for possible prosecution, review cases submitted by the investigators, prepare cases for the courts, carry out efficient and effective advocacy at court and where appropriate, work with other agencies to improve the effectiveness and efficiency of the criminal justice system. At the moment, the Police Force is finalizing the Investigations General Guidelines (IGI) which will act as important tools for investigators and provide them with guidelines on how to handle various investigations. There is a specific chapter dealing with investigation of sexual offences, and treatment of victims of sexual offences. The guidelines also put in place improved mechanisms for supervision of investigation officers. For the Prosecutors, the National Prosecution Services is also finalizing the Prosecution General instructions which provide instructions for on prosecution of offences and treatment of witnesses and offer guidance to criminal investigators.

Both the Police Force and the National Prosecution Services are currently in the process of installing electronic case docket management systems which will facilitate strengthening of record and data management in these offices, which to a great extent spearhead the investigation and prosecution of sexual offences. Initial indication/ assessment on information gathered from some of the tools already installed clearly shows the need for a specific focus on sexual offences since increasingly we are receiving more files across the country.

For the National Prosecution Services, there has also been a process to strengthen the monitoring and inspection of prosecution work in the zonal offices. This to a great extent provides the management with a realistic view of not only the strengths in implementation of core functions but also the challenges met, enabling the office to better plan how to respond to the identified challenges. At the same time, both the Police Force and the National Prosecution Services are undergoing institutional reforms, introducing new departments, sections and units to address various new challenges. One of the units is the witness protection and the Gender and vulnerable group desks which are at the moment at initial stages of establishment. These units are expected to address some of the challenges met in responding to sexual offences.

SEXTORTION IN RELATION TO PUBLIC SERVICE ETHICS

Introduction

As it is for leaders, public servants working in the government and in public institutions, non-judicial officers included, must adhere to the provisions of the Code of Conduct and Ethics for Public Service Act, 2002 and Public Service Regulations, 2003.

Definition

Ethics are:
moral principles that control or influence a person's behaviour. Professional (business, judicial, lawyers, engineers, medical etc. ethics are provided for in the respective Code of Ethics for each profession. Furthermore, ethics mean a system of moral principles or rules of behaviour regulating work or a certain profession. Ethics is a branch of philosophy which deals with moral principles.
(Oxford Advanced Learner's Dictionary, New Edition, Page 427-428).

When discussing ethics, issues of right or wrong take precedence and so do matters of standards, or what is morally correct or acceptable to a particular group of people. For instance, it is not only unethical for a boss to extort sex from a subordinate staff working in his office but it is also criminal under section 25 of the Prevention and Combating of Corruption Act, 2007 Cap. 329 R.E. 2002. The section forbids sexual bribery or sexual favours extorted by abusing the authority entrusted to an officer.

Judges and Magistrates in Tanzania have a Code of Conduct which was introduced in 1984. Likewise, doctors, engineers, nurses, midwives, teachers, quantity surveyors, architects, accountants, police, prison officers, soldiers, advocates and other professionals have a code of conduct and ethics guiding their respective professions.

In this regard, the Public Service Act 2002 and Public Service Regulations, 2003 apply to all public employees, non-judicial officers included. Hence, non-judicial officers, being public servants must comply with the provisions of the Constitution of the United Republic of Tanzania, the laws of the land and all the Public Service Regulations, Orders and Circulars. Furthermore, public servants must discharge their duties efficiently and effectively. They must refrain from sexual exploitation, sexual harassment or abuse of their subordinates or the customers they attend in the course of their duties.

The Don'ts of Public Servants

Public servants are prohibited from discriminating, suppressing or sexually exploiting their subordinates. They are furthermore, barred by law from misusing, misappropriating or expropriating public funds or properties. They must

observe their respective codes of conduct, dress decently, maintain clean bodies and offices for the best welfare and health of workers, Moreover, public servants should avoid misbehaviour, degrading conduct, immoral utterances, actions, pictures, or signals connoting sexual abuse or which cause sexual annoyance to others.

Criminality at Work

To prevent sextortion and other forms of sexual abuse through abuse of authority, public servants should note that the following acts are criminal and unethical:-

Rape
Indecent assault
Sexual harassment of whatever type.
Uttering words, showing signs, touching, showing pornographic materials.
Sexual bribery and other corrupt transactions.

In the case of Seif Abadan versus Republic, Criminal Appeal no 320 of 2009, Court of Appeal at Tanga (unreported) a doctor who had been convicted for raping a female patient and sentenced to imprisonment lost his second appeal. The Court upheld conviction and sentence. In another case, Onesphory Materu versus Republic Criminal Appeal No. 334 of 2009, Court of Appeal of Tanzania at Tanga (unreported) the Court dismissed the appeal. In the said case, the complainant was a 14 year old girl. She had been suspected of theft and was put in a police cell pending investigations. She was the only one in the lock-up. The appellant, a policeman, approached her in the cell and promised to set her free if she agreed to have sex with him. The appellant put the promise in writing. The complainant had sex with the appellant but he did not set her free. In protest, the complainant raised a big alarm which attracted help from the other police officers on duty at the police station. Subsequently the appellant was charged with the offence of rape. The trial court convicted him and sentenced him to the statutory minimum sentence of thirty years imprisonment. Aggrieved, the appellant unsuccessfully appealed to the High Court. His appeal to the Court of Appeal of Tanzania, the highest court of the land, was dismissed.

In yet another sextortion case, Michael Ngalingwa versus the Republic. Cr. Case no. 7 of 2010 in the Court of Resident Magistrate at Iringa, the accused, a teacher cum pastor lured his female pupil to go to a guest house to make love with him. The school girl prudently informed her mother who sought the intervention of the police who set up a decoy. The accused promised to give the girl high grades in English and religion tests if she gave him sexual favors. When the girl went to the guest house to meet the accused, she entered the room the accused had hired for the immoral act whereupon he was arrested and charged for corrupt transactions under the provisions of section 25 of the Prevention and Combuting of Corruption Act, 2007. The trial Court found him guilty and sentenced him to a fine of shs. 500,000/= or one year imprisonment in default.

The Dos of the Public Servant

Serving all customers equally and fairly.

Serving disabled persons, the aged, orphans and widows with special care and due attention.
Delivering services expeditiously.
Being courteous and selfless in serving the public.
Being patriotic and committed to assigned work.
Being clean and maintaining a clean environment all the time.

The Effects of Sextortion

1. Sextortion escalates HIV infection at work places, in the family and in the community particularly among the vulnerable groups namely children, women and the poor.
2. Sextortion breaks down work discipline resulting in low morale, poor performance and lower productivity.
3. The contraction of HIV/AIDS has depleted financial and human resources in terms of the high cost of anti-viral treatment, inability to work due to constant ill health of workers and their family members who have fallen victim to the HIV/AIDS pandemic and other sexually transmitted diseases.
4. Child bearing workers afflicted by HIV infection run a serious risk of infecting their offspring.
5. Families lose bread earners leaving large numbers of poor widows and orphans.

THE WAY FORWARD

Introduction

The prevalence of gender based violence continues to be a reality that challenges both state and non-state actors concerned with human rights. Several attempts at various levels have been made to fight the monster by awareness creation, introduction of legislation, advocacy and campaigns through the media. Despite these efforts thousands of ordinary people are still vulnerable to inhuman treatment under circumstances where they may not use any of the available tools and mechanisms to protect their rights and reclaim their human dignity principally due to ignorance, despair, or lack of confidence in law enforcement agencies. Hence, law enforcement agencies and all human rights stake holders must enhance cooperation in eradicating violence against women, sexual abuse and exploitation, and other degrading practices which undermine human respect and dignity.

The problem of sexual abuse is rampant and it covers all spheres of woman's life regardless of her status. For time immemorial, this has been a big problem and it is rooted in our traditions which ranked women lower than men. Consequently, a woman is not only exploited, oppressed and discriminated economically, but is also sexually abused. Traditionally, a woman is considered as a person not in a position to make a decision on sex matters. Whatever a man says is proper and it becomes final. She is not even supposed to raise a query. Women grew in traditions which allowed polygamy, child marriages, widow cleansing, widow inheritance, female genital mutilation and others of the like. These traditions to a great extent influenced women and they thought it was the right pattern of life. It is because of this reason that women are sexually abused and harassed all the time.

There is a need to develop guidelines for enforcement of sexual offences which will assist in providing investigators and prosecutors with the necessary tools on matters to consider and action when dealing with sextortion and other types of sexual offences. This will assist in providing more clarity to the provisions of the laws criminalizing sexual crimes.

Investigation of sexual offences is a specialism, and must be treated as such. It requires special training of detectives who can then properly and thoroughly investigate complex cases where essential evidence is often difficult to find. We need to rethink how our justice system treats victims of crime, especially sexual offences where victims go through trauma, physical and mental disorientation. We need to have programmes that specifically address matters related to witness protection and also are supportive to victims of crimes.

Last but not least, one cannot but reiterate the need for strengthened collaboration of all the actors in the criminal justice process. This will have far-reaching effect in our common vision of timely access to justice for all- and with more emphasis for those victims of sextortion and other sexual offences

The adverse effect of sextortion in the community is of unimaginable magnitude, ranging from wide spread of HIV/AIDS to breakdown of families and poverty. Each one has a role to play in ending sextortion. If we live

exemplary lives in adhering to the code of ethics even the next generation of workers will be influenced into maintaining high ethical standards. When we practice what we preach we become credible. We need to be pro-active in ending sextortion and other unpalatable acts at our places of works.

Efforts made by the Government

The burning question before us is how we get out of this situation. We commend the efforts made by the government of Tanzania so far, in dealing with the situation. Among the steps taken by the government is the enactment of the Sexual Offences (Special Provisions) Act[12], (SOSPA). The Act broadened the definition of the offence of rape to cover a lot of situations where formally women were sexually exploited and abused, but those circumstances were not criminalized. Such situations include circumstances where women are sexually abused by persons in authority, management of staff of a remand home or other places of authority, hospitals, traditional healer or religious leaders.

To give effect to SOSPA, a lot of other laws had to be amended[13] to be in line with the amendments. SOSPA has not however succeeded to live to its objective. We still have a lot of hurdles in a lot of areas such as ignorance of the law, traditional prejudices, inefficiency and incompetence on the part of the law enforcers. Despite the severe punishment imposed on sexual offences, the problem of sexual abuse is still rampart. Sexual abuse cases have been on the increase. The statistics for sessions done in Tanga for the year 2009 and 2010 will show what is taking place on the ground.

TABLE 1. CRIMINAL APPEALS INVOLVING RAPE CASES FOR TANGA SESSION (2009)[14]

	Case No.	Name	Offence	Age of Appellant	Age of victim	Outcome of appeal
1	452/07	Hamisi Shabani	Unnatural offence c/s 154 (1) of the Penal Code, Cap 16.	18	12	Appeal dismissed
2	453/07	Thomas Swakimu	Rape c/s 130 (1) & 131(1) of the Penal Code, Cap 16	23	10	Appeal dismissed
3	71/08	Hamisi Msutu	Rape c/s 130 (1) & 131(1) of Cap 16	20	17	Appeal allowed
4	72/08	Hamisi Juma	Unnatural offence c/s 154 (1) of the Penal Code, Cap 16	34	9	Appeal allowed
5	151/08	Ayubu Hassani	Rape c/s 130 (1) & 131(1) of Cap 16	20	15	Appeal dismissed
6	175/98	Ramadhani Sango	Rape	43	8	Appeal dismissed
7	18/09	God Daniel	Rape c/s 130 (1) & 131(1) Cap 16	20	8	Appeal allowed
8	22/09	Abdallah Mohamed	Rape c/s 130 (1) & 131(1) Cap 16	30	28	Appeal dismissed

12 Act No. 4 of 1998
13 The Penal Code, The Criminal Procedure Act, The Children And Young Persons Act, The Evidence Act and The Minimum Sentences Act.
14 From 22nd June to 13th July 2009

9	26/09	Abraham Mohamed	Rape c/s 130 (1) & 131(1) Cap 16	40	18	Appeal allowed
10	28/09	Mohamed Hussein	Rape c/s 130 (1) & 131(1) Cap 16	30	28	Appeal dismissed
11	69/09	Haji Salum & Mwilo Lugendo	Rape c/s 130 (1) & 131(1) Cap 16	23 & 18	11	Appeal allowed
12	24/09	Sembe Athumani & Another	Gang Rape c/s 130(1) & 131A (1) &(2) of Cap 16	29 & 28	24	Appeal allowed

TABLE 2. CRIMINAL APPEALS INVOLVING RAPE CASES FOR TANGA SESSION 2010.[15]

	Case No.	Name of appellant	Offence	Age of appellant	Age of victim	Sentence
1	27/09	Paradisi Michael	Unnatural offence c/s 154 (1) of cap 16	45	19	Appeal dismissed
2	79/09	Ayubu Hassani	Rape c/s 130 (1) & 131(1) Cap 16	24	16	Appeal dismissed
3	80/09	Rajabu Ally	Rape c/s 130 (1) & 131(1) Cap 16	33	9	Appeal dismissed
4	133/09	Saidi Ally Mkong'goto	Rape c/s 130 (1) & 131(1) Cap 16	45	14	Appeal dismissed
5	135/09	Augustino Mosha	Rape c/s 130 (1) & 131(1) Cap 16	26	17	Appeal dismissed
6	138/09	Saidi Hussein	Rape c/s 130 (1) & 131(1) Cap 16	35	17	Appeal dismissed.
7	246/09	Andrew Petro	Rape c/s 130 (1) & 131(1) Cap 16	26	17	Appeal allowed
8	320/09	Dr. Seif Mohamed	Rape c/s 130 (1) & 131(1) Cap 16	54	24	Appeal dismissed

For the year 2009, the Tanga session had a total of 24 Criminal appeals out of which 50% were cases of sexual abuse, namely rape and unnatural offence. The 2010 session had 17 criminal appeals and the rape cases were almost 50% as well. Out of the total sexual abuse appeals determined in the 2009 sessions, 50% were allowed while the remaining 50% were dismissed. As for the 2010 session all appeals except 1 were dismissed. The Tanga session is a good indicator of how severe the problem of sexual abuse is to women. The case of Dr. Mohamed El-Abadan Vs R[16] shows what takes place in respect of persons in authority. In this case a doctor raped a patient who went to him to collect results of X-ray picture. Instead of the doctor reading the X-ray picture to her, he told her to lay on the bed for chest examination. In that process he raped her after threatening her that if she did not give in, he would terminate the examination.

Another effort made by the government is the ratification of the International Conventions on Women Human

15 8th to 23rd March 2010.
16 Criminal Appeal No.320 of 2009(Unreported)

Rights Law.[17]. We are fortunate that the Constitution of the United Republic of Tanzania in article 9(f) states that the State authority and all its agencies are obliged to direct their policies and programmes towards ensuring that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights. The law of the Child Act, 2009 has incorporated the Convention on the Rights of the Child. It provides for improvement of the means under which the children's rights are given, custody and protection of children's rights with a view of harmonizing various laws, International Conventions and agreements on the rights of the child, the National Policy which aims at barring any kind of discrimination or humiliation[18]on children. The law has also risen the age of the child to eighteen years. It also amends all other laws related to children.[19] The Act specifically stipulates for guidance, care, maintenance and parentage of a child, in line with equality, growth and the right of the child to reside with parents. It bars acts associated with outdated customs, it prohibits child labour and also has provisions for children with special needs.

The Role of the Courts

Cases involving sextortion and other forms of sexual abuse ultimately end in the courts. The Constitution of the United Republic of Tanzania,[20] provides in article 107A (1) that:

The Judiciary shall be the final authority with final decision in dispensation of justice in Tanzania.

It also provides in article 107A (2) how the work should be done:

In delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principles, that is to say-

(a) Impartiality to all without due regard to one's social or economic status;

(b) Not to delay dispensation of justice without reasonable ground;

(c) To award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament.

(d) To promote and enhance dispute resolution among persons involved in the disputes; and

(e) To dispense justice without being tied up with undue technical provisions which may obstruct dispensation of justice.

It is further provided in Article 107B that:

In exercising the power of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the land.

It is encouraging to note that the Court of Appeal of Tanzania and the High Court of Tanzania have been on the forefront to promote human rights generally. The case of **D.P.P VS Daudi Pete**[21] is a good example. In the said case the Court sanctioned resort to the African Charter, in interpreting the Constitutional Bill of Rights. In **Alex John Vs R**[22] the Court considered the issue whether article 13(6) (a) of the Constitution could be invoked in aid of

17 The Universal Declaration of Human Rights , The Convention on the Elimination of all Forms of Discrimination Against Women, The Banjul Charter, The Banjul Charter, The Protocol to the African Charter on Human and Peoples Rights of Women in Africa.

18 See the objects and reasons for the legislation

19 The Law of Marriage, Act, the Education Act, the Employment and Labour Relations Act, the Penal Code and the Criminal Procedure Act.

20 Cap 2 R.E. 2002

21 [1993]T.L.R. 22

22 Criminal Appeal No. 129 of 2006(Unreported)

the appellant in a criminal case. The article provides:

> *Where the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned.*

The Court finally held that:

> *It is evident from article 13(1) and (6)(a) of the Constitution that equality before the law and entitlement to a fair trial or hearing are constitutional guarantees. In our settled minds, these are fundamental rights enjoyed by all human beings and not gifts or privileges which can be granted and withdrawn or withheld and/or granted at the pleasure of some authority or agency. The right to a fair trial or hearing is as firmly rooted international law norm and is evidenced by the proposal to include it in the non-derogable rights provided for in article 4(2) of the International Covenant on Civil and Political Rights (1966)(henceforth the ICCPR):See, the draft on the Third Optional Protocol to the ICCPR, aiming at guaranteeing under all circumstances the right to Fair Trial and Remedy,*

The Court further stated:

> *The right to a fair trial, apart from the said article 13(6)(a), we should hasten to add, is explicitly encapsulated in Article 10 of the Universal Declaration of Human Rights(or the UDHR hereinafter), Article 7(1) of the African Charter on Human and Peoples Rights, and Article 14 of the ICCPR, all of which Tanzania has ratified. It is also guaranteed in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as Article 8(1) and (3) of the American Convention on Human Rights. In addition, it is recognised in articles 6(a) and 7(2) of the Treaty Establishing the East African Community (1999).*

Similarly, in **D.P.P VS Ally & Others**[23] the Court held;-

> *In interpreting the Constitution, the Courts have to take into account the provisions of the UDHR (1948) and other treaties which Tanzania has ratified.*

In the majority of cases involving sexual abuse brought to the courts, the culprits have ended up in acquittals because of a variety of reasons.[24] These include poor investigation, incompetency and lack of diligence in the prosecution of the cases, also incompetency and lack of diligence on the part of the trial magistrate, lack of facilities and also corruption. The decisions cited above are binding on the subordinate courts and should pave the way for good performance.[25] What we have to ensure is the dissemination of the decisions to the subordinate courts.

Employment of Competent Staff

Another aspect to allow us to move towards the proper direction is to employ competent law enforcing officers, that is

23 Criminal Appeal No. 44 and 45 of 1985
24 We do not have concrete data to support our assertion but we are speaking from experience.
25 This is because of the principle of "stare decis" that lower courts are bound by decisions of the higher courts.

the magistrates, the police and the public prosecutors. Fortunately for the Courts and the Office of the Attorney General implementation of such a program has started. The qualification for a primary court magistrate[26] is now a diploma in law which is a two-year program. Initially they used to undergo only a nine-month crash program. We hope with this change, the performance of the primary courts will improve. The future plan is to have resident magistrates[27] man the District Courts and gradually phase out the District Magistrates.[28] Likewise, the prosecution of cases in the District and Courts of Resident Magistrates will be conducted by State Attorneys who are graduates in Bachelor of Laws Degree. The Attorney General has already started a pilot project in some regions. We hope that when the program is in full swing, the performance in the subordinate courts will improve tremendously. As for the Police, apart from establishing a special unit dealing with sexual offences at the police stations, the women employees in the police force have also formed a network which, we think, will also assist in the investigation of sexual harassment among themselves as well as among victims of such offence brought to the police station. The enactment of law on criminal research and data management will assist in getting a true picture of what is happening on the ground.

Most sexual offences cases also end in the acquittal of the accused persons because of lack of medical evidence to support the victim that she was sexually abused. The medical reports are not filled properly and at times the victims are referred for a check up when it is too late to get anything positive to assist the victim. For instance in the case of **Dr.Mohamed El-Abadan** (supra), the victim of the offence reported the incident to the Medical Officer in charge of the hospital and to the police station, yet she was not referred for examination on that same day. Instead, she was told to report on the next day after being warned not to wash herself. At times the offences take place where there are no medical facilities around, at other times the victims are not carefully examined because of poor facilities or lack of competent personnel. The Ministry of health also needs to find a solution on this aspect. This is a matter which could be taken care of by the association of the Tanzania Women Doctors. A discussion with them on their intervention on this matter would, in my opinion, yield fruit. But all the same, the principle laid down by Court of Appeal is that in rape cases, the best evidence to prove the offence is the victim herself. The Court pronounced so in the case of **Seleman Mkumba V R[29]** where the Court observed that:-

> *The evidence to prove rape is that of the victim herself, an adult where consent is required, and where it is not issue, any other woman.*

Training

Disseminating knowledge on law and imparting skills to the law enforcing officers for performance of their duties is very important for an efficient delivery of services. For this reason, it is important to have on job trainings all the time. Moreover, training is required to keep in pace with the changing technology. Speaking from experience from the Jurisprudence of Equality Program, Jurisprudence on the Ground and now the Millennium Development Goal 3 program (MDG3), training is a mandatory requirement. At the grassroots level we still have the traditions and the public which is still unaware of its rights. Apart from the non-governmental organisations which have

26 This is the lowest class in our judicial system
27 These are graduates in Bachelor of Laws degree.
28 They had a Diploma in Law.
29 Criminal Appeal No.94 of 1999(Unreported)

outreach programs which assist in raising the people's awareness of human rights and the procedures for claiming for them, the religious leaders would also be of assistance in promoting upright conduct and respect for human dignity. Continuing to use their services will, in the long run, change the traditional practices for a better world.

Conclusion

We saw that the problem of discrimination and violence against women is rooted in the traditional practices which ranked women lower to men. The rising rate of crime despite severe penalties tends to suggest that human beings cannot be controlled by the law alone. We need to also change other aspects of our social life. We need to be above reproach so as to be able to discharge our duties and obligations properly and effectively. For this reason it was found necessary to incorporate ethics in the public service in the MDG3 Program, and for that matter in every program that TAWJA conducts.

SEIF MOHAMED EL-ABADAN V. THE REPUBLIC

CRIMINAL APPEAL NO. 320 of 2009

SEIF MOHAMED EL-ABADAN ..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Tanga)

(Mussa, J.)

dated the 31st day of July, 2009

in

Criminal Appeal No. 73 **of 2008**

JUDGEMENT OF THE COURT

17 & 22 March, 2010

MUNUO, J.A.:

The appellant, Dr. Seif Mohamed El-Abadan, was in Korogwe District Court Criminal Case No. 63 of 2007, convicted of rape contrary to sections 130(3)(c) and 131(1) of the Penal Code, Cap. 16 R.E. 2002. It was alleged that on the 14th November, 2006 at Magunga hospital in Korogwe District, the appellant abused his office as a doctor and staff of the said hospital and had carnal knowledge of a patient, one Stenala Pwere. Upon conviction, the appellant was sentenced to the mandatory sentence of 30 years imprisonment. Aggrieved, the appellant unsuccessfully lodged Criminal Appeal No. 73 of 2008 in the High Court of Tanzania at Tanga before Mussa, J. Thereafter, through the services of Dr. Lamwai, learned advocate, the appellant lodged the present appeal to challenge the conviction and sentence.

The complainant, a victim of rape by the appellant, testified as PW1. Then aged 24 years, Stenala Pwere had been suffering from chest pains so she went to Magunga hospital where she was x-rayed. On the material day she went to collect her x-ray results. She collected the x-ray results from PW2 Dr. Makunga who directed her to take her picture to the doctor in Room 6. The doctor in Room 6 happened to be the appellant.

PW1 found the appellant attending other patients in Room 6. He directed her to lie on the bed for a check up. PW1 complied but before she lay on the bed for a check up, the appellant told her to undress the blouse and brassier which she did. The appellant checked the chest and then told her to put off her underwear so that he would check her uterus:

"--- Aliniambia nivue chupi; nipandishe skirt anipime kizazi."

PW1 complied. Then the appellant gave her more instructions thus:

"Nikunje miguu, nipanue msamba yaani nipanue miguu."

As instructed, the complainant bent and put her legs apart. The appellant put his fingers in her private parts saying he was examining her uterus which he said had problems. The appellant then told PW1 to go out and he would call her later on. She complied. After attending some patients, the appellant recalled PW1 and told her to go to the examination bed, behind the curtain. When the patient he had went out, the appellant locked the door with a key and put the keys on the table. He proceeded to the curtain and told PW1 to take off her underwear. When PW1 appeared hesitant to put off her underwear, the appellant threatened to withhold treatment if she failed to obey his instructions. He ordered PW1 to take off all her clothes and lie on the bed on her back which she did. He again put his fingers in her private parts while he caressed her breasts with the other hand which had no glove on. He even told PW1 to caress his stomach whereafter he unzipped his trousers and put his penis in PW1's private parts, holding tightly unto her. He did not release the victim until she forcibly pushed him. He got out after satisfying his lust for PW1 said that she was at that juncture wet in her private parts and on her thighs. She left the room saying she would report the appellant who in turn asked her not to do so, promising to give her medicine or money. He said that he sexually assaulted her out of love. He offered Sh. 1,000/= but she rejected the money. He opened the door for PW1 to get out.

Out to report the matter, PW1 narrated her ordeal to a male employee she encountered. He cautioned her not to tell any other person that story. Still pursuing her grievance, she found a nurse who listened to her ordeal. Meanwhile, another nurse came in and listened to her story as well. Said PW1:

> *"--- Before I finished she called another nurse who said could listen to me. They sat together and I began to narrate. Then the first nurse went away and the other took me to the doctor, she said will listen to me ---"*

As it was PW2 Jabir Muhamed Makunga, a clinical officer, PW3 Mickidadi Hussein, the secretary of the hospital, PW4 Susana Ilembo a nurse and PW5 Rashid Saidi Mfaume, the District Medical Officer of the Korogwe District Government Hospital, all heard the victim narrate her ordeal in the appellant's treatment room in the presence of the appellant. Subsequently, the complainant reported the matter to her parents and to the police. She reported the matter to the police on the same day at about 7.00 p.m. but instead of issuing a PF3 to her for treatment, the police told her to go home and come back on the next day. That next day the police took her statement and gave her a PF3 for a pregnancy test. Thereafter the appellant was arrested and charged with the offence of rape per the charge sheet.

The appellant gave a sworn defence denying the charge. He admitted treating the complainant but he denied examining her. He said he read the x-ray results of the complainant and prescribed treatment for her. He was later called by his in charge, PW5 and was informed that PW1 had complained that he had raped her which he denied. He claimed that PW4 Susan Ilembo fabricated the case against him. He said that he had conflicts with

PW4 Susan Ilembo who had threatened to fix him. The appellant stated in cross-examination that he did not know the complainant before.

In this appeal Dr. Lamwai, learned advocate for the appellant filed six grounds of appeal, to wit:

1. *That the learned judge failed to appreciate the misdirection of the learned trial magistrate on the issue of credibility of the prosecution witnesses. Had he properly directed himself, he would have concluded that the complainant acted in a dubious way in deciding to go home and wash herself and/or consult her relatives on the issue before she took any action;*
2. *That the learned judge failed to draw an adverse inference on the failure to call the first alleged witness of the complainant as a witness in the case;*
3. *That the learned judge erred in law and in fact in failing to appreciate the weakness of the prosecution case in view of the defence claim that PW4 Susan Ilembo had bad relations with the hospital after failing to get promotions;*
4. *That the learned judge should have held that the complainant was not a reliable witness because she gave contradictory statements to the police and in court on how she left her brazier in the consulting room.*
5. *That there was no credible evidence of penetration and that the finding on penetration was based purely on conjecture.*
6. *That the courts below misdirected themselves on the burden and standard of proof.*

Submitting on grounds 1, 3, 4 and 5 together, Dr. Lamwai insisted that the prosecutrix was not a witness of truth so the learned judge ought to have held that the trial court erroneously found her a credible witness. Faulting the learned magistrate for considering and rejecting the defence before dealing with the prosecution evidence, counsel for the appellant contended that the trial magistrate prejudged the matter after visiting the *locus in quo* and collecting information in his head instead of recording the *locus in quo* information on the record. This, Dr. Lamwai further contended, was a serious misdirection on the part of the trial magistrate.

Counsel for the appellant asserted that the prosecution did not discharge the burden of proving the guilt of the appellant beyond all reasonable doubt. He faulted the prosecution for failing to call an important witness, Mary Chorogondo who received the complaint before PW4 Susan Ilembo. We should, counsel urged, draw adverse inference at the failure of the prosecution to call the said witness. He discredited the testimony of PW4 Susan Ilembo whom he said had bad relations with the hospital authorities and management because she was not promoted so she fabricated the case to fix the appellant. PW4 and PW1 planted the brassier in the treatment room of the appellant to implicate him in the rape matter, counsel for the appellant contended.

Dr. Lamwai urged us not to sustain the conviction under section 127(7) of the Evidence Act, 1967, Cap. 6 R.E. 2002 because the complainant was not a credible witness.

Mr. Oswald Tibabyekomya, learned Senior State Attorney, supported the conviction and sentence. He argued that this being a second appeal, and the Court not having had the advantage of seeing and assessing the demeanour of the prosecution witnesses, this Court would not be justified to fault the findings of fact and credibility by the

courts below. He cited the case of **Dickson Elia Ngamba Shapwata and Another versus Republic**, Criminal Appeal No. 97 of 2002 (CAT) (unreported) in which the Court held that -

> *"--- A trial court's finding as to credibility of witnesses is usually binding on an appeal court unless there are circumstances on the record which call for a reassessment of their credibility. (See **Omari Ahmed versus The Republic** [1983] TLR 52.)"*

We wish also to refer to the case of **Augustino Kaganya & Others versus Republic (1994) TLR 16** wherein the Court considered the issue of credibility of witnesses and held that -

> *"--- as the decision regarding who attacked the deceased was wholly based on the credibility of the witness, it is the trial judge who saw and heard the prosecution and defence witnesses as they testified who is better placed than the appellate court to assess their credibility ---"*

On the charge being concocted by PW1 and PW4 to fix the appellant, the learned Senior State Attorney observed that from the evidence on record neither PW1 nor the appellant knew each other before the day of the rape so there was no bad blood between the two. PW4 Susan Ilembo, the Senior State Attorney observed, was not a party to the crime, she simply received the complaint and forwarded the victim to the District Medical Officer for action. Hence, the allegations of the rape case being fabricated by PW4 to fix the appellant are mere afterthoughts, the Senior State Attorney observed. The defence, the Senior State Attorney, further contended, should have called Mary Chorogondo to testify for the appellant if the prosecution chose not to call her. If the defence opted not to call Mary Chorogondo, they cannot transfer that failure on the prosecution, the Senior State Attorney argued. On this, the Republic cited the case of **James Bandoma versus Republic**, Criminal Appeal No. 93 of 1999 (CA) at Mbeya, (unreported) in which the Court observed, and we quote:

> *"One might say that Sumuni should have been called as a witness to say if it was true the appellant remained at home with Maklina and that he (Sumuni) was sent to collect sand. But the prosecution did not need to call Sumuni to confirm that. If any one needed to call Sumuni, and assuming Sumuni was not really sent away, it was the appellant, if he wanted to show that Maklina lied when she claimed that Sumuni was sent to collect sand ---"*

We are of the settled view that if the defence considered Mary Chorogondo an important witness, they would have called her. From the record Mary Chorogondo listened to the complainant and left. Her colleague, PW4 Susan Ilembo listened to the story and prudently referred the complainant to the District Medical Officer. The defence allegations of PW4 having bad relations with her superiors at the hospital are mere afterthoughts because she was not cross-examined on such allegations. They were safely introduced by the defence behind her back.

The learned Senior State Attorney further noted that the appellant had the keys to the room in which the rape was committed by him on the victim, his patient. There was no evidence to establish that PW4 had been to

the material room to plant PW1's brassier in a box under the examination bed, as the defence alleges. From the evidence, the appellant locked the room and kept the keys on the table during the sexual assault on PW1. When the rape was over, he opened the door to let her out. When she remembered that she left her brassier in the room, the appellant went to open the door and she recovered the brassier. The story of the brassier being planted in the room, is incredulous in the circumstances.

Asserting that the prosecution is not bound to summon every witness who knows something about the case, the learned Senior State Attorney referred us to the case of **Aziz Abdallah versus Republic** (1991) TLR 71 to support his assertion.

> In **Azizi Abdallah's** case, the Court held, and we quote:
> *"The general and well known rule is that the prosecutor is under a **prima facie** duty to call those witnesses who, from their connection with the the transaction in question, are able to testify on material facts. If such witnesses are within reach but are not called without sufficient reason being shown, the court may draw an inference adverse to the prosecution."*

We dealt with the issue of Mary Chorogondo earlier on and noted that the defence could, if they deemed it fit, have called the said witness to testify for the appellant. The evidence on record shows that the said Mary briefly listened to the rape complaint and for reasons best known to herself quitted, leaving PW1 with PW4. PW4 boldly referred the victim to the District Medical Officer so that the patient would get redress. With this in mind, we close the chapter of Mary Chorogondo.

Minor discrepancies in the prosecution case, the learned Senior State Attorney contended, cannot fault the finding of credibility by the courts below. The defence was not the least probable in view of the strong prosecution evidence on record. The appeal, the Republic submitted, lacks merit so it should be dismissed in its entirety.

We have carefully considered the submissions of either party. We have, unfortunately failed to find a ground for denting the credibility of the complainant. We wrote out the facts of the case in detail. We have not found contradictions in the evidence of PW1, the victim of the sexual assault by her doctor, the appellant. Indeed, this being a second appeal, we have not had the advantage of seeing, hearing and assessing the demeanor of the prosecution and defence witnesses to justify interfering with the findings of the trial court on credibility. Going by the evidence on record, we find no justification to fault the judgment of the High Court. We agree with the learned judge that-

> *"It is treacherous for one to stray away from a professional calling and turn against one amongst the very lot who bestowed their trust unto the person."*

In this case, it was treacherous for the appellant doctor to rape his patient, PW1.

Under the circumstances, we are satisfied that the prosecution established the guilt of the appellant beyond all

reasonable doubt. We find no merit in this appeal. We accordingly dismiss the appeal.

DATED at TANGA this 19th day of March, 2010.

E. N. MUNUO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

IN THE COURT OF APPEAL OF TANZANIA
AT TANGA

(CORAM: MSOFFE, J.A., LUANDA, J.A., And MANDIA, J.A.)

CRIMINAL APPEAL NO. 99 OF 2010

ALLY HUSSEIN KATUA ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the judgment of the High
Court of Tanzania at Tanga)

(Teemba, J.)

dated the 16th day of April, 2010
in
Criminal Appeal No. 85 of 2005

JUDGMENT OF THE COURT

30 March & 8 April 2011

MSOFFE, J.A.:

Before the District Court of Muheza (Mussa, PDM) the appellant ALLY HUSSEIN KATUA was charged with the offence of rape contrary to sections 130 (1) and 131 (1) of the Penal Code, as amended. After a full trial he was acquitted for want of sufficient evidence. Aggrieved, the Director of Public Prosecutions appealed to the High Court of Tanzania at Tanga where Teemba, J. set aside the order of acquittal, convicted the appellant as charged, and sentenced him to a term of imprisonment for thirty years with an order for payment of Shs. 500,000/= as compensation to the victim of the rape in question. The appellant is dissatisfied, hence this appeal.

The memorandum of appeal is a three page document in which there are three basic complaints. In view of the position we have taken on the appeal we will set out the complaints in fairly sufficient detail. **One,** that the charge was defective in that the specific offence under **section 130 (3)** of the Penal Code, as amended, was not stated. To this end, the appellant cited a passage from this Court's decision in **Mhina Hamisi v Republic,** Criminal Appeal No. 83 of 2005 (unreported) thus:-

Lack of consent is a vital element in the offence of rape. Yet the charge against the appellant did not disclose this important element. It is trite law that a charge should disclose the nature of the offence so that an accused person may know the nature of the case he has to answer.

Two, that the evidence of the complainant, PW1 Rehema Athumani, should not have been believed and acted upon wholesale because her own grandmother, PW2 Mwantumu Juma, testified and told the trial court that she had a history of mental illness and confusion. In this sense, the appellant cited portions of the evidence of PW2 thus:-

I recall on 20/1/2004 one Rehema Athumani (PW1) complained that his head was confused. However, when Rehema Athumani (PW1) was seriously sick, I fed the occurrence to the accused, hence the accused called at my house and treated Rehema Athumani (PW1). I thus in the following day followed the accused and fed to him of what was happening ... It was thereafter we left and on the way Rehema Athumani (PW1) shouted as usual and cried out ...

Three, the judge on first appeal did not address her mind to the issue of time frame which was important in checking the veracity of the evidence of PW1 and PW2. We must point here that this point is not elegantly framed in the memorandum of appeal and in this regard we take the liberty to reproduce the point *verbatim* thus:-

... PW1 the victim clarified in court's dock that the scenario accrued on 21/1/2004 at 8.00 p.m. it was on 21/1/2004 at 11.00 a.m. she was informed by PW1 of the rape scenario, it is ridiculous; and with simple arithmetic this was nine (9) hours before the occurrence of the entire offence ...

At this juncture, we think it is pertinent to state the facts, *albeit* briefly. PW1 was a student at Mlingano Secondary School. She was staying with her grandmother PW2 Mwantumu Juma in the same village in which the appellant, a traditional healer or local medicineman, also lived. Prior to the date of incident PW1 was reported sick and the appellant was approached so that he could treat her. On 21/1/2004 PW1 was taken to the appellant's home. The appellant initiated some treatment. What followed thereafter was a long story which bordered on rituals, sorcery etc. but it will suffice to say that PW1 was taken to a number of places and ultimately the appellant asked her to undress and she obliged. Then the appellant spread a piece of cloth on the ground, asked her to sleep on it, slept on her chest and then raped her. When the appellant was through with the sexual encounter, which he had earlier told PW1 that it was part of the treatment or healing process, he warned her not to disclose it to anyone. They put on their clothes and went towards the appellant's home. After leaving the appellant's home, and on their way back home she disclosed the rape incident to PW2. The incident was eventually reported to the relevant authorities.

In defence, the appellant admitted to have treated PW1 on the day in question. His only point of departure from the prosecution version was that he denied raping PW1. He was supported by his witnesses on the sickness and treatment of PW1 but none could vouch or say anything on the alleged rape.

This is a second appeal, so to say, in the sense that the case originated from the District Court of Muheza. Under such circumstances, this Court is cautious and rarely interferes with findings of fact by the court(s) below. The Court can only interfere where there are misdirections or non-directions on the evidence, where the court(s) misapprehended the evidence etc. - See **Director of Public Prosecutions v Jaffari Mfaume Kawawa** (1981) TLR 149, **Amratlal D.M. t/a ZANZIBAR SILK STORES v A.H. JARIWALA t/a ZANZIBAR HOTEL (1980) TLR 31, DPP v NOBERT MBUNDA,** C.A.T Criminal Appeal No. 108 of 2004 (unreported).

As observed by this Court in **Goodluck Kyando v Republic,** Criminal Appeal No. 118 of 2003 (unreported):-

> *... It is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness ...*

The crucial issue in this appeal is whether or not PW1, the key and only material witness, was credible and entitled to be believed.

The complaint in the first ground of appeal should not detain us. It is true, as opined by Mr. Faraja Nchimbi learned State Attorney appearing on behalf of the respondent Republic, that normally the element of lack of consent ought to be reflected in a charge of rape. But with the advent of **section 130 (2) (e)** of the Penal Code consent is no longer relevant where the victim is under eighteen years of age. In this case, there was no dispute that PW1 was aged 17 years at the time and therefore within the ambit of the above provision. As it is, although the charge facing the appellant did not specifically state the above provision there was no harm because the omission was cured by **section 388 (1)** of the **Criminal Procedure Act** (CAP 20 R.E. 2002) in that the appellant knew the nature of charge against him. In fact, we may observe here in passing that the charge against the appellant ought to have been preferred under **sections 130 (1) (2) (e) (d)** and **131 (1)** of the Penal Code. **Paragraph (d)** above would particularly be important in highlighting the fact that the appellant being a traditional healer took advantage of his position and committed rape on PW1 as we shall demonstrate hereunder.

This brings us to the second ground of appeal in which the main complaint really is that the evidence of PW1 should not have been believed wholly more so because he had the history of mental illness. With respect, much as we agree that PW1 had that history but in the circumstances of this case we are satisfied that her evidence was nothing but the whole truth. She was so coherent in her testimony that she must have testified on an event in which she had utmost control of and her mental faculties at the time were quite alive to what the appellant had done to her. She was very much in control of the situation at hand and what was happening in the world around her at the time. To this extent, we are in entire agreement with the judge on first appeal in her assessment of the reliability of the evidence of PW1 thus:-

> *"First PW1 remembered all the stages of her treatment by the respondent. She was able to identify the places and actions performed during the fateful night, and which were not disputed at all. Second, she repeated the same thing to the family meeting and to her school teachers. Third, she was taken to police and finally she testified before the trial court on the same accusations against*

the respondent. Nowhere on record it is indicated that PW1 failed, at any particular moment to remember the occurrence in connection to this incident. PW1 was fine when narrating the incident to PW2. Thus, her credibility was not shaken and therefore, her testimony was nothing but the truth of what exactly happened."

Further to the above passage from the High Court judgment, we also believe that PW1 was truthful when she testified thus:-

"It was thereafter the accused asked me to accompany him so that we could bury the head of the hen. I did follow and we went to a junction. He refused the grandmother to follow. We thus came to a junction and we buried the head of that hen and thereafter asked me we walk to the down at a distance of about 15 paces. It was at that area again the accused asked me to take of my clothes again. I took off all the clothes and the accused took off all the clothes. The accused thereafter laid down the piece of cloth and he asked me to lay there looking upwards. I did follow his directions, but abruptly the accused who at that juncture had also removed his clothes did lay on my body hence he looked downwards. The accused however, was of carnal knowledge of me in that the penis of the accused entered wholly to my vagina. The accused on doing that act alleged that he was doing the act so called "KUTAMBIKA". However, I believed that he was carrying a "TAMBIKO". However, I informed the accused that I was feeling pains. The accused thereafter he left me and he asked to now accompany him so that we could be back home. However, at that juncture I revealed white solutions at my vagina, here I revealed so at the juncture, I abacked at my house. The accused asked me not to tell anybody otherwise all my things would be distorted and even I will fail to go to school. It was thereafter we turned back at the house of the accused, whereby I met my young brother and my grandmother. It was thereafter the accused allowed us to leave and we left. However, on the way I fed to my grand mother of the occurrence hence she fed also to others. However, my grandmother a backed to the accused and asked him of the accused, hence my grandmother abacked and informed me that he refused..."

Surely, if PW1 was mentally sick or confused, as the appellant would wish us to believe, she would not have been able to give the above narrative which consisted of even the minutest details. As already stated, her version of the story was coherent and consistent with truth.

We are aware from the evidence of PW1 that on returning to the appellant's house she did not immediately report the rape incident to her grandmother PW2; and that the failure to do so might probably be contrary to the holding of this Court in **Marwa Wangiti and Another v Republic,** Criminal Appeal No. 6 of 1995 (unreported) that:-

The ability of a witness to name a suspect at the earliest opportunity is an all important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry.

But the following points should be made here. **One,** that **Wangiti's** case is good law but it did not lay a principle that the failure or delay to name a suspect at the earliest opportunity is fatal. At the end of the day therefore, each case has to be decided in its own context and peculiar circumstances. **Two,** in this case, there was no total failure by PW1 to report the incident at the earliest possible opportunity. On the contrary, she reported the incident to PW2 **immediately** after the two had left the appellant's home. Once PW1 reported to PW2 the latter carried forward the narrative thus:-

> *... It was thereafter we left and on the way Rehema Athumani (PW1) shouted as usual and cried hence I abacked at the accused, hence I fed everything to the accused. The accused took medicine and brought the same to Rehema Athumani (PW1) thereafter she became alright and the accused had already left. Rehema Athumani (PW1) thereafter fed to me that she cried out because the accused who is her uncle was of carnal knowledge of her. It was thereafter I fed the occurrence to one Habiba Kuziwa the cell leader...*

So, if we may repeat, from the evidence of PW1 and PW2 (above) it is evident that PW1 reported the rape incident immediately after the duo had left the appellant's home. It is also evident that when PW1 shouted and cried PW2 thought that she did so as part of her normal habit but PW1 clarified that she did so in agony due to what the appellant had done to her. **Three,** at any rate, PW1 clarified as to why she did not report the incident to PW2 **immediately** after they had assembled at the appellant's home. This is borne out by, or rather reflected in, her evidence in cross-examination by the appellant thus:-

> *... you told me not to tell and that is why I did not inform your wife* ***and anybody right away ...***
>
> *(Emphasis supplied.)*

The provisions of **section 130 (4) (a)** of the Penal Code are important in an offence of this nature to the effect that penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence. In this case, evidence of penetration is abundant and is to be found in the above evidence of PW1 thus:-

> *... The accused however, was of carnal knowledge of me in that the penis of the accused entered wholly to my vagina. The accused on doing that act so called "KUTAMBIKIA". However, I believed that he was carrying a "TAMBIKO". However, I informed the accused that I was feeling pains. The accused thereafter he left me and he asked me to accompany him so that we could be back home. However, at that juncture I revealed white solutions at my vagina...*

The third and final ground of appeal could have been framed under ground two in that it essentially seeks to impeach the evidence of PW1 on ground of alleged contradictions in the latter's testimony. With respect, this

ground has no merit. As already stated, like the High Court judge, we are satisfied that PW1 was a credible witness. So even if there were contradictions, our view is that they were minor and did not go to the root of the overall prosecution case against the appellant.

Without prejudice to the foregoing, under **section 6 (7) (a)** of the **Appellate Jurisdiction Act** (CAP 141 R.E. 2002) an aggrieved party may appeal to this Court on a matter of law (not including severity of sentence) but not on a matter of fact. Strictly speaking, in our reading and appreciation of the evidence on record there is no serious point of law involved in this appeal. The evidence involved in the case essentially centres on matters of fact only.

For the foregoing reasons, we dismiss the appeal.
DATED at TANGA this 6th day of April, 2011.

J.H. MSOFFE
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

IN THE COURT OF APPEAL OF TANZANIA
AT TANGA

(CORAM: MSOFFE, J.A., LUANDA, J.A., And MANDIA, J.A.)

CRIMINAL APPEAL NO. 334 OF 2009

ONESPHORY MATERU ..... APPELLANT
VERSUS
THE REPUBLIC ..... RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Tanga)

(Mussa, J.)

dated the 31st day of July, 2009
in
Criminal Appeal No. 3 of 2009

JUDGMENT OF THE COURT

22 & 28 March 2011

MANDIA, J.A.:

On 25/2/2007 PW4 WP 3503 Anna of Lushoto Police Station was resting at home. At 14.20 hours (2.20 p.m.) in the afternoon a fellow police officer called PC Jumanne called her by telephone and asked her to go to the Police Station to attend to an emergency. She went there and found one suspect, who was in remand, crying. The suspect is the complainant PW2 Salma Yusuf who alleged that the appellant had raped her inside a police cell and had promised to release her in writing. The suspect Salma Yusuf showed PW4 WP 3503 Anna a written note in the appellant's handwriting (Exhibit P1) in which the appellant had directed the release of Salma Yusuf from remand custody. During cross-examination by Mr. Ntonge, learned advocate who appeared for the appellant in the trial, WP 3503 Anna divulged to the court that the complainant was crying out as to why the appellant had carnal knowledge of her on promise of release but was now refusing to release her, and that the appellant had washed her (PW4's) private parts with water after the act of sexual intercourse in order to wash away the seminal fluid. PW4 also revealed under cross-examination that it was abnormal for a male police officer to enter a female cell, and that it was also abnormal for a suspect to be released using the method of writing a note in the form of Exhibit P1. All the same PW4 WP 3503 Anna directed one PC Jumanne, a fellow police officer, to report the matter to their seniors. PC Jumanne was not called to testify in the court of first instance, but the senior

officer, to whom he made the report as directed by PW4 WP 3503 Anna, testified. He is PW1 Assistant Inspector Athumani of Lushoto Police Station. Inspector Athumani in turn interviewed the complainant and thereafter reported the matter to the officer in charge SP Maganga. SP Maganga in turn was not called to testify. All in all, on the following day 26/2/2007 PW3 WP 3257 Corporal Agripina took the complainant to hospital where she was examined and a medical report PF3 filled in for her and tendered in court as Exhibit P2. WP Corporal Agripina, while giving evidence-in-chief told the trial court that the victim was found with bruises and remains of semen in the vagina. The certified proceedings showed that PW3 was not cross-examined by the appellant's advocate, but when the original record was called up it transpired that PW3 was indeed offered for cross-examination, and this is what she said:-

> "xxd by accd:
> I am explaining what I had witnessed. I know the semens as I am old enough. I know not the semen at the vagina of victim was of whom. Yes, there is difference between semen and milk. I brought the said victim on 26/2/2007."

This bit of evidence shows clearly that PW3 WP 3257 Corporal Agripina not only took PW2 Salma Yusuf to hospital for medical examination but in fact attended the medical examination and was an actual witness thereof.

In her narrative to court, the complainant PW2 Salma Yusuf, a fourteen years old girl, gave evidence under affirmation after *voire dire* test. She first gave evidence on 12/10/2007 and was duly cross-examined by the accused person. She was recalled to court on 12/12/2007 at the application of Mr. Ntonge learned advocate, who had entered appearance on behalf of the appellant. In her testimony on 12/10/2007 the complainant alleged that the appellant first undressed her and then undressed himself and the sexual act followed, whereas in her testimony on 12/12/2007 she said the appellant first undressed himself before undressing her. Apart from this inconsistency, the evidence of the complainant is straightforward, and it shows that on 25/2/2007 she was in remand custody at Lushoto Police Station on a charge of theft. At 11 a.m. in the morning the appellant, who was a police officer on duty at the Police Station, approached her and took her from her police cell, where she was the lone suspect, to a bench outside where she could sit in the sun. Apart from affording her the sunshine treat, the appellant gave her Shs. 1,000/=. Thereafter the appellant took her back to her cell and wrote her a "release note". The note was quoted in full by the learned first appellate judge when the matter was in appeal, and it makes interesting reading. It goes thus:-

BOND SHEET

Mimi Salima Nimeachiliwa na Polisi kwani nimeonekana sina hatia leo tarehe 25/2/07

Cpl. Materu
CHUMBA CHA MASHTAKA } Stamped
POLISI KITUO LUSHOTO

After giving the complainant the "release note" the appellant left her inside the police cell. He went back after her at about 2 p.m. and had sex with her while the two were both in a state of undress. The appellant disengaged from the sex act when PC Jumanne called, and this is what made the complainant cry out when she realized that the appellant would not keep his promise of releasing her after the sex act.

The appellant gave sworn testimony in his defence in the trial court. He admitted that he was on duty at the Police Station on 25/2/2007 as alleged by the prosecution witnesses. He also admitted that he wrote the "release paper" as alleged by the prosecution witnesses who were fellow police officers. Giving the reason why he wrote the "release note", the appellant testified that he wrote the note on behalf of one PC Mboka of Bumbuli Police Station who made a verbal promise to release the complainant but did not put the promise into writing. The appellant alleged that the complainant got agitated and demanded written assurance that she will be released and he (appellant) gave the written note on behalf of PC Mboka. After receiving the note the complainant cooled down and he, the appellant, left on other duties. The appellant refuted the allegations of sexual misconduct leveled against him, and fielded one witness in defence DW2 Getruda Aloyce who claimed that she saw the appellant writing the "release note" in order to cool down the complainant.

Notwithstanding all his protestations of innocence, the trial court found the appellant guilty, convicted him and sentenced him to thirty years imprisonment, twenty four strokes of the cane and an order that he pays Shs.700,000/= as compensation to the complainant. This package aggrieved the appellant, and he preferred a first appeal to the High Court of Tanzania at Tanga. The appeal was dismissed in its entirety, hence this second appeal.

When the appeal was called on for hearing the appellant appeared in person, unrepresented, and the respondent/ Republic was represented by Mr. Faraja Nchimbi, learned State Attorney. The appellant filed a memorandum of appeal consisting of two main grounds. The first ground is that the trial court did not warn itself of the dangers of convicting on the basis of the uncorroborated evidence of the victim. The appellant argued that the victim PW2 Salima Yusuf was not worth of belief because she contradicted herself by first saying that the appellant undressed her before undressing himself, and later changing to say the appellant undressed himself before undressing her. In the second ground the appellant is faulting the two courts below for relying on the "release note" written by the appellant as proof that the offence was committed.

On the requirement of a self-warning by the court we find that the appellant had raised this same point in the second ground of his memorandum of appeal to the High Court. The High Court addressed this point very adequately at page 60 of the record by tracing the history of the law before and after the advent of Section 127 (7) of the Evidence Act as amended by the Sexual Offences Special provisions Act, Number 4 of 1998. Prior to the amendment there was a requirement for the court to warn itself of the dangers of basing a conviction on the uncorroborated evidence of a child where a sexual offence was involved. After the amendment, the need for the warning was done away with. The only burden imposed on the court now is to give reasons that it is satisfied that a child of tender years or the victim of the offence is telling nothing but the truth. We dismiss ground one

for lack of merit.

In the second ground the appellant faults the courts below for relying on the "release note" which he wrote to the complainant. The record of trial shows that in his defence the appellant admitted to writing the "release note" and even fielded a defence witness DW2 Getruda Aloyce to prove that the appellant indeed wrote the note Exhibit P1. It is instructive that the note was tendered in evidence without any objection from the appellant. Ground two has no merit and we dismiss it as well. In the final analysis, we find that the appeal has no merit and we dismiss it in its entirety.

DATED at TANGA this 25th day of March, 2011.

J.H. MSOFFE
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

W.S. MANDIA
JUSTICE OF APPEAL

RESOURCES AVAILABLE

There are numerous non-governmental organizations, agencies and religious institutions dealing with women's rights and challenges, including sextortion.

Below is a list of organizations which, given the necessary mandate and support, can severally and jointly enlist their efforts to combat sextortion:

1. **United Nation Development Program, Tanzania:**
   Supports a Program on Strengthening Transparency, Integrity, and the Rule of Law (STIR) in Tanzania in collaboration with law enforcement agencies.

2. **Tanzania Women Lawyers Association (TAWLA)**
   P.O. Box 9460,
   Dar es Salaam
   Email: tawla@raha.com
   Website: www.tawla.org.tz
   A human rights organization of woman lawyers committed to promoting the rights of women and children. TAWLA provides legal aid to poor women and other disadvantaged groups. The association networks with other proactive women's organizations and stakeholders who support TAWLA'S advocacy programs.

3. **Kilimanjaro Women Information Exchange and Consultancy, Organization (KWIECO)**
   P.O. Box 376,
   Moshi.
   Email: kwieco@kwieco.co.org
   Website: www.kwieco.org
   A women's rights organization specializing in information exchange with other gender-based organizations, provides legal aid to poor women and children, conducts sensitization seminars and workshops on issues of human rights, child rights, sexual abuse in the family, private and public sectors, property rights succession and marriage.

4. **Women Legal Aid Centre (WLAC)**
   P.O. Box 10463,
   Dar es Salaam
   Tel. +255 22 2152189
   Legal Aid for a range of problems affecting women, youths and children; publishes pamphlets for public education on legal aspects, e.g. property rights, marriage, simple litigation and land rights.

5. Women Fighting Aids in Tanzania (SWAA-T)

P.O. Box 71489
Dar es Salaam
Tel: +255 22 2460443
A community based organization (CBO) assisting women to pursue their rights in succession, litigation, property matters, custody of children and HIV/AIDS related issues.

6. Kiota Women Health and Development Organization (KIWOHEDE)

P.O. Box 101127,
Dar es Salaam.
Tel. +255 22 2400077
Exists to contribute to the elimination of all forms of abuse, sexual violence, and exploitation through policy and community engagement, reproductive health and institutionalization of prevention, withdrawal, rehabilitation, and integration mechanisms for vulnerable children, youth and women.

7. Arusha Women's Legal Aid and Human Rights Centre (ALWAHURIC)

A human rights organization striving to promote and protect rights for women and children by bringing gender equality in Tanzania through legal aid and networking with other organizations whose activities are related to AWLAHURIC objectives.

8. Kivulini Women Rights Organization,

P.O. Box 11348,
Mwanza
Deals with issues of domestic violence.

9. Tanzania Media Women Association (TAMWA)

P.O. Box 8981,
Dar es Salaam
Email: tamwa@raha.com
A women's media organization committed to promoting and conducting public education by radio, television and newspapers to sensitize women on different issues, Includeing sextortion.

10. Tanzania Gender Networking Programme (TGNP),

P.O. Box 8921,
Dar es Salaam
Tel +255 22 2443205
An activist organization focusing on the practical promotion and application of gender equality, equity and women's empowerment objectives through policy advocacy and mainstreaming of gender and pro-poor perspectives at all levels in Tanzania society and beyond.

11. Tanzania Police Female Network

A women's police department organization for protecting women and children, especially victims of rape, sextortion, domestic violence, etc.

END NOTES

a Black's Law Dictionary, Seventh Edition Page 1502.

b UNODC on Human Trafficking and Migrant Smuggling
http://www.unodc.org/unodc/en/human trafficking /index.html

c The Palermo Protocol, 2000.

d International Organization For Migration [IOM] Initiative to Counter -Human Trafficking in Tanzania: IOM May 05- Oct 31, 2007 Report.

e IOM Trafficking In Persons Report, 2006 Pages 242 t0 243.

f Ibid.

g Penal Code, Cap 16 R.E 2002, s. 139A.

h The Ant-Trafficking in Persons Act, 2008 came into effect on the 1st February, 2009 vide Government Notice No.40 0f 2009.

i Ibid, section 4(1) (b) and (c).

j Ibid, sections 3 and 4(2)

k The United Nations Protocol To Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime, 2000 Article 3(b).

l Human Trafficking and Sexual Exploitation within the USA and Abroad
http:www.abolish human trafficking.com/2007 09 01 archive.html

m http://www.new org.pl/en.php/news/ 1. html?&nw=4156&cre=1

n Trafficking in Women http://www.interpol.com/Public/THB/Women/Default.asp

o Human Trafficking & Sexual Exploitation
http://www.abolishhumantrafficking.com/2007_09_01_archive.html 1/4/2010

p Trafficking News Bulletin at page 7. Trafficking In Persons June Report, US Department of State Publication Revised, June 2006. 11335 Office of Under Secretary for Democracy and Global Affairs.

q Trafficking News Bulletin page 7. US Department of State Publication Revised, 11335 Office of Under Secretary for Democracy and Global Affairs.

r Anti-Trafficking Act, 2009 section 2.

s Ibid section 17(1).

t Ibid section 17(2)

u Ibid section 17(3)

v Ibid section 17 (4)

w Ibid section 20.

x Ibid sections 21 to 23.

y Ibid sections 24 to 32.

z Penal Code, CAP. 16 R.E 2002 Chapter 15 Sections [first number is missing] to 148.

aa The Guardian, Monday December 14, 2009 pages 1-2: Man arrested for child trafficking.

ab Source of Data: KIWOHEDE Buguruni Malapa, KIWOHEDE House No.38, Dar es Salaam.

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