

## **An Exploration of National Laws Governing Prosecutions of Sexual Offences in Influencing Sexual Assault Against Women in Zanzibar**

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### **Abstract**

*This paper aims at exploring the extent of national laws governing prosecutions of sexual offences in influencing sexual assault against women in Zanzibar. The study was guided by examining the challenges facing the national laws in governing sexual offences, and the recommended measures taken to improve the national laws to respond the needs and demands of the community in Zanzibar in relation to sexual trials. The study was conducted in urban west region in Zanzibar. A total of 80 respondents were sampled from 6 human service agencies including Bububu gender desks, Madema gender desk, Zanzibar female lawyers' association, Tanzania media women association, department of women affairs and Mnazi Mmoja one stop center. The target study population included female lawyers, social welfare officers, social workers and police officers. Data was collected using questionnaire and interview methods. The study found that, the national laws governing prosecutions of sexual offences in Zanzibar have many challenges hence resulting to the increased behavior of sexual assault. The challenges were critically attributed to non-existence of codified SA Laws, problems on implementation of laws, weakness of the SA related laws and continuation of SA issues despite mounting interventions, accused with two offences but convicted with lesser punishment or one offence, and there are no governing principles on time limit in investigating cases. Finally, the findings suggested the codification and consolidation of SA related laws, an adoption of a single specific sexual related laws, law reform in some provisions and fast tracking of sexual assault cases.*

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**Keywords:** *National laws, prosecution, sexual offences, sexual assault, Zanzibar*

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### **Introduction**

Over the past three decades there has been what might be described as a tidal wave of countries introducing domestic violence legislation. This began in the mid-1970s, when only one country in the world had legislation in place (Gottfried, 2020). Today, all most all countries have legislation against domestic violence particularly sexual assault compared to almost none 25 years ago (Streat, 2020). The regional patterns show that coverage is most limited in the Middle East and North Africa, where only a minority about one in four countries has any laws in place. Sub-Saharan Africa is also

lagging behind, in that just less than half of the countries have prohibitions against sexual assault in place (Rein, 2019). The most recently available data suggests that around 49 countries do not have domestic violence legislation in place (Pardeck, 2019). The World Bank data examines the laws country-by-country. It is noted that the United States is classified as lacking the requisite laws because, based on the laws for New York, which is the main business city in the Women, Business and the Law study (Parrish, 2020). The State New York has removed the marital exemption but has not introduced specific legislation criminalizing marital rape (Polowy, 2020). The largest gaps are observed in the Sub-Sahara African and Middle East and North Africa (Perloff, 2021) By way of contrast, Latin America shows the most extensive national coverage (Reamer, 2021).

Yet, there are several major obstacles to effectiveness including notably lack of awareness, low probability of apprehension and, in some countries, the co-existence of customary and religious laws that are not consistent with the legislative prohibitions (Bunston, 2022). There are marked examples where laws on the books have not significantly affected behavior, from laws prohibiting child marriage in Bangladesh, to sex selective abortion in China and dowry payments in India (Cervený, 2019). This raises the more general issue of how laws interact with social norms that tolerate sexual assault. Social norms are important in several respects including their effects on male beliefs and behaviors (whether it is acceptable to beat your wife); female beliefs and behaviors (whether it is okay to be beaten by your husband); as well as on police responsiveness and judicial attitudes, as well as the existence and shape of laws against assault (Alexander, 2024).

In Zanzibar, sexual assault (SA) is a grave reality in the lives of many women in particular. It results from gender norms and social and economic inequities that give privilege to men over women (Gorrof, 2016). There is a mounting recognition in Zanzibar of gender discrimination and gender inequality in different aspects of life. This awakening includes a growing acknowledgement of how prevalent sexual assault is and extent to which it harms not only women and girls but also men and boys and the country at large (Evans, 2014).

Conceptually, sexual assault is both a violation of human rights and a form of harassment. It has dire consequences for its victims including loss of life, chronic ill health, sexual and reproductive disorders as well as psychological and negative behavioral outcomes (Caplan, 2012). The outcomes of these consequences on individual victims have wider social and economic implications on society as a whole and hence its prioritization as a vice to be nabbed (Corden, 2013).

Thus, the problem is that the SA continues to be highly prevalent in Zanzibar despite efforts in legal and social interventions at different levels. The weaknesses in law enforcement could be cited as one among the main reasons for this failure. Moreover, the complexities and complications of issues regarding sexual assault (SA) as explained above seem to be reflected in the current legal system and institutional frameworks. Having contradictory safeguard of the rights of women in particular the marital rape and anal penetration could be cited as one of the indicators of the said confusion and intricacy. Despite the fact that Zanzibar has adopted different strategies including the criminal and civil justice developments, establishment of the Children's Court, existence of national law such as Evidence Act, Penal Act, Criminal Procedure Act, Kadhis' Court Act, the problem of sexual assault (SA) remains challenging and delicate.

### **Literature review**

In the light of Tanzania mainland, such complexities and complications of issues regarding gender based violence (GBV) and violence against women (VAW) are reflected in the current Tanzania legal, policy and institutional frameworks. Having contradictory safeguard of the rights of the women could be cited as one of the indicators of the said confusion and intricacy (LSRP, 2022). In a bid to address such challenges, Tanzania adopted devise of strategies as this analysis could find it out. Such initiatives include undergoing criminal and civil justice reforms, mainly under the legal sector reform program (LSRP). This has resulted into amendment and enactment of substantive and procedural laws, some which addresses GBV/VAW and other gender-related challenges including HIV/AIDS; disability rights; and child rights (LSRP, 2019).

However, despite those and other notable legal reforms, the social and legal protections of vulnerable groups (women) seem to remain fragile. This situation is partly attributed by presence of ruthless laws, some of which were named by the Nyalali's Presidential Commission as 40 bad laws about 22 years ago, but, have remained in force all the time (TAWLA, 2014). As this analysis found out, some of the laws with weak or bad provisions or poor enforcement mechanisms as far as far as the protection of vulnerable groups against GBV/VAW is concerned include:

- a) "Law of Marriage Act, Cap. 29, 2019 which does not sanction marital rape and is silent on wife beating both of which are highly prevalent cultural practices".
- b) "Anti-Trafficking in Persons Act, 2008: Despite the magnitude of the problem, there are only few cases which have been investigated, prosecuted and adjudicated by the court

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regarding trafficking in persons in Tanzania. This study links this situation with low awareness about the law, lack of pro-active measures by law enforcers”, etc.

- c) “Penal Code, Cap. 16, 2019 which does not criminalize marital rape; does not contain a specific provision on GBV/VAW; some of the SV offences, in particular, FGM are narrowly covered, left out women who are above 18 years”.

#### **Laws governing prosecutions of sexual offences in Zanzibar**

As for legal framework, the study of Zanzibar criminal Laws (TAMWA, 2019) found out that, there is no comprehensive law on SA as a whole or domestic violence. However, some of the elements of SA are criminalized under the Penal Code, Cap. 16 as ‘sexual offences.’ The SA is also addressed (in pieces) by a number of other legislations including those relating to the rights of children, HIV/AIDS, and persons with disabilities (Lennox, 2022).

#### ***Penal Act No. 6, 2018***

In regarding the historical perspectives of the frameworks, the Penal Decree was repealed by the Penal Act No. 6 of 2006 as repealed by Penal Act No. 6 of 2018. The Penal Act and the Criminal Procedure Act are dealt under the office of the Director of Public Prosecution in Zanzibar however the implementations of the laws face the whole society in relation to crimes (LAS, 2019). The Director of Public Prosecutor (DPP) office aims to eradicate violence against women by taking various measures and efforts. The DPP office is committed to ensuring that the international standards, which require that special consideration, are applied to cases involving women (ZAFELA, 2022).

The Penal Act No. 6 of 2018 is a recent law as repealed in 2018, many of the provisions of the law are adequately protected by the justice system of the various human beings. However, there are some gaps which need to be filled and taken into consideration. These gaps are such as:

- ❖ The investigation processes. The law does not put time limit in investigating the cases of the sexual assault. The process takes a picture of experience that the investigation needs to be done within a short period in order to avoid the destruction of evidence. It seems that there is a need for a law to address time in regarding the distortion of an agreement;
- ❖ The law is silence on the effect of the women victim who get psychological impact. It should incorporate the provision of counselling or therapy for those who will be affected when they

are assaulted. Many victims of sexual assault seem to have psychological and physiological problems which include mental health illness, depression, anxiety and escape from home.

- ❖ Sexual assault (SA) cases in most cases related to offenders of assault are relatives of the family, neighbors, blood related members include uncle and brother, teachers, madrasa, community members. The law needs to impose the double penalties to such kind of offenders;
- ❖ The sexual assault provisions are not well incorporated. The law does not capture the women and disabled women in this act. The detail specification of the sexual assault cases needs to be taken into consideration.

### 1) *The Criminal Procedure Act No. 7, 2018*

The Criminal Procedure Decree was repealed by the Criminal Act No.7 of 2006 as repealed by the Criminal Procedure Act No. 2018. A Criminal Procedure Act No. 8, 2018 is a procedural law for all offences stipulated under Penal Act No.6 of 2018. For example, the legal presentation of the women which need appropriate assistance from the time that they are apprehended until any final appeal is completed (ZLSC, 2022).

The Criminal Procedure Act No. 7 of 2018 explains all procedures dealing with various offences however the most difficult issues are implementation of the law. Some of the gaps are as follow:

- i. There are a number of provisions contained in the first schedule that are framed in normal terms but which offences may indicate a heightened gender analysis. Offences against liberty under the first Schedule part 23 for example could disproportionately affect women as victims. However, it is disproportionately women who will be charged with infanticide even when the same may not be with criminal intent.
- ii. Section 7 & 8 sentence which Regional Magistrate Court & District Magistrate Court may pass: For regional magistrate court – imprisonment for a time not exceeding 14 years, or fine not exceeding 14 million. For district magistrate court: Imprisonment for a time not exceeding 7 years or fine not exceeding 7 million Without indicating starting time, a magistrate can sentence even to one year or less than that. The Act does specify starting point that is from five years to seven years. At the same time, there is no mention of how to treat sexual assault victims and survivors while they are also a vulnerable group.
- iii. Duration of case hearing. Under this Criminal Act, SA and other GBV related cases are expected to last for 60 days and should not take more than six months at the latest.

**2) *Kadhis' Court Act No. 9, 2017***

The Kadhis' Court Act No. 9 of 2017 is the recent law established which repeal the Kadhis' Court Act No. 3 of 1985.<sup>1</sup> The Kadhis' Court Act No. 3 of 1985 previously provides for the establishment of the Kadhis' Court and its hierarchy. The Kadhis' Court Act No. 3 of 1985 was repealed as it is not sufficient to hear the Muslim family matters. However, the enactment of the new Kadhis' Court Act No. 9 of 2017 does not examine the major changes to transform the independence of jurisdiction of Muslim personal law in Zanzibar to be exclusively under the Kadhis' Court (TAMWA, 2018). Moreover, the following are the gaps that need to be undertaken in the same weight;

- i. Section 6 Introduces Islamic and not civil rules of evidence. This is problematic in that the evidence of women is not regarded as some of those of men;
- ii. Section 7 rules of procedure are also no longer subject to the laws but up to Chief Kadhi's to make such law thought not clear what should guide the same. There is no obligation to follow civil or criminal rules of procedure;
- iii. There are procedures that have been introduced lately with regards to the institution of marriage but it is not clear how this relates to SA. For example, the curriculum for prospective couples is not public and thus it is difficult to gauge if it complies with an anti-SA carriage;
- iv. The composition of the Court is mainly male. In some instances, female lawyers are not allowed. Such an environment could be intimidation for some plaintiffs; SA incidents are sometimes criminal offences. Kadhis' Court can only grant for civil remedies. There is presently no obligation to award a remedy if sexually harm established.

**3) *Evidence Act No. 9 of 2017***

The development of the Evidence Act in Zanzibar started with Evidence Decree Act Cap 5 of 2017 in a historic venture. The law originated from India and was officially introduced in 1917. Ever since 1917 there are about four amendments which have been ventured in 1922, 1934, 1939 and 1956. Nevertheless, the fifth drastic amendments were added in 2016 to amend the Evidence Decree Cap 5 of 1917 so as to simplify the accumulation of evidence using new technological innovation, circumstantial evidence and reduce the burden of proof to the injured parties as was incorporated in Evidence Act No. 9, 2017 (TAMWA, 2020). This means that law should not be imported from abroad, but should originate from the society concerned.

Women can be victims in relation to any offence. For instance, as victim they may be sexually or physically assaulted by intimate partners of other adults. In the domestic setting they may witness

assault against a close family member (Small, 2019). The UN Guidelines on justice in matters involving women victims and witness of crime which sets standards of good practice for the treatment of women victim and witnesses notes that “women victim and witness are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique need in order to prevent further hardships and trauma that may result from their participation in the criminal justice system”.

The Evidence Act No. 9 of 2016 which repeal the Evidence Decree Cap 5 of 2017 examines various issues relating to evidence. However, there are some gaps that need to be taken into account. Those are;

- i. Does not apply to arbitration and affidavits (S.2). The cases of cheating on sexual assault are so many, and it is difficult to be handled.
- ii. Section 34 (6) there is no implication on corroboration in criminal proceedings where it is tied to burden of proof elaborated under parts 16, 18 and 19. Moreover, the law does not look another alternative in order to procure justice for women and others.
- iii. Section 58 imputing of good character as relevant evidence, this sometimes may prejudice those considered be person of good character biasness or injustice to the victim especially for women.
- iv. The burden of proof especially in criminal cases of a sexual nature defeat the purpose of reporting and instituting a crime as may prove impossible to prove in absence of same video recording. Mandatory reporting of care providers is still not embraced (Derrick, 2021).

The above reviews clearly indicate that laws governing prosecutions of sexual offences in Zanzibar is for somehow very challenging and fragile. This results to the limited enforcement of existing laws and implementation of legal provisions in influencing sexual assault cases among women.

### **Methodology**

The study employed a descriptive research design, which according to Borg and Gall (2011) involve providing careful descriptions of a phenomenon. The study was carried out at urban west region in Zanzibar. The target populations of the study were female lawyers, social welfare officers, police officers and social workers. In this study, data were collected through questionnaires and interviews methods. The mixed research approaches which included both quantitative and qualitative methods



were used to collect and analyze data in this study. Purposive and simple random sampling techniques were used to select 80 respondents or samples from study's target population.

### **Study findings**

The major findings across a number of areas which were investigated are presented in this section and this forms the core of this paper. Whilst a number of issues were investigated, the subsection starts with the challenges facing national laws governing prosecutions of sexual offences in influencing the rate of sexual assault among women in Zanzibar.

#### ***Perceived challenges facing laws governing prosecutions of sexual offences in influencing the rate of sexual assault perpetration in Zanzibar***

Table 1 indicated that the national laws governing prosecutions of sexual offences in Zanzibar encountered different challenges that hinder proper enforcement of laws in sexual assault cases. About 20% of the respondents mentioned non-existence of codified SA laws, whereas 11.2% said weakness of the SA related laws. However, 15% of the respondents said continuation of SA issues despite mounting interventions, 10% of the respondents mentioned the accused with two offences but convicted with lesser punishment or one offence. Moreover, 7.5% of the respondents said lack of governing principles on time limit in investigating cases, whereby 26.2% of the respondents said scattered SA laws, and only 10% of the respondents said women have not been completely addressed in national laws.

**Table 1: Perceived challenges facing laws governing prosecutions of sexual offences in influencing sexual assault to women**

<b>Perceived challenges</b>	<b>Responses</b>	
	<b>Frequency</b>	<b>Percent %</b>
Non-existence of codified SA laws	16	20
Weaknesses of SA related laws	9	11.2
Continuation of SA issues despite mounting interventions	12	15
Accused with two offences but committed with less punishment or one offence	8	10
Lack of fixed time in investigation process	6	7.5
Scattered SA laws	21	26.2



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Women have not been completely addressed in national laws	8	10
<b>Total</b>	<b>80</b>	<b>100</b>

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**Source: Field data, 2024**

This is an indication that national laws governing prosecutions of sexual offences in Zanzibar are actual fragile in the sense that it penalizes the sexual assault cases for women but they are not fully addressed and incorporated in the laws. For example, Penal Act No. 6, 2018 does not incorporate well the provisions of SA in the laws, and at the same time the law is silence on protection of women who are above 18 years. This means that the rate of sexual assault incidences increases in momentum in Zanzibar and thus, a call for reviewing the law to incorporate and address the women fully in order to make it more relevant with the demands and needs for life realities of women.

A social welfare officer from Urban District cited that some of the challenges facing the current laws governing prosecution of sexual offences was weaknesses of SA related laws and problems on the implementation of such laws. *The social worker stated that:*

*“Lack of implementation of SA related laws for one or another influence the rate of sexual assault perpetration in the community. As a result, the conviction rate of sexual offences become very low. Challenges that are mainly attributed by inadequate police investigation, incomplete medical reports and non-availability of witnesses because of inordinate delay in disposal of cases”.*

The above finding is analogous with TAMWA’s (2019) report which stipulated that due to ineffective implementation of Criminal Procedure Act No 7 of 2018 and Evidence Act No 9 of 2017 lead the persistence of SA incidences as victims normally neglect provision of evidence before the court without being convicted in accordance to the law. Based on the findings, it is observed that measures taken to combat SA incidences are not enough in winning this fight. This is because the court ruling including prosecutions and conviction are being compromised by case delays, cumbersome procedures, administrative bottlenecks, inadequate police investigation and weaknesses of some of the laws concerning SA in Zanzibar.

#### ***Perceived recommendation for improving the laws governing prosecutions on sexual offences in Zanzibar***

The finding of the study indicated that consequently, 13.7% of the respondents recommended the codification of SA laws, 8.7% of the respondents suggested the consolidation of SA laws, whereas 20% identified the adoption of a single common law to address SA and VAW in general. However,

18.7% of the respondents endorsed the fast-tracking of SA cases with fixed time frame in investigating cases, while the majority of respondents 38.7% mentioned the law amendment for the national laws governing prosecution of sexual offences.

**Table 2: Perceived recommendation for improving the laws governing prosecution of sexual offences in Zanzibar**

Perceived recommendation	Responses	
	Frequency	Percent %
Codification of SA laws	11	13.7
Consolidation of SA laws	7	8.7
Adoption of a single common law to address SA and VAW	16	20
Fast-tracking of SA cases with fixed timeframe in investigation cases	15	18.7
SA law amendment	31	38.7
<b>Total</b>	<b>80</b>	<b>100</b>

**Source: Field data, 2024**

Interview method was conducted to add in-depth insights and value into the quantitative data of this study from key informants for further authentication on perceived recommendation for strengthening the laws governing prosecutions of sexual offences in Zanzibar. A police officer from Madema Gender Desk stated that:

*“It is true to say that our existing national laws governing prosecution of sexual offences have got many weaknesses and challenges, and they need to be reformed. The amendment of the laws need to be expedited to make sure that accountability for the perpetrators is observed, and for the victims to access their rights”.*

Generally, questionnaire and interviews findings show that different recommendations have been projected to strengthen the laws governing prosecutions of sexual offences in influencing the rate of sexual assault in Zanzibar. The result validates Mzuri’s (2019) finding that in order to address the SA related crimes, the government should emphasize on the adoption of a single law that will put together all offences associated with acts of sexual assault in one docket. The findings indicate that

current criminal laws in Zanzibar face many shortcomings, largely provide an opportunity for perpetrators to be released leading to massive increase in the wave of sexual harassment in the community, including marital rape. Sultan and Lusangi (2020) established that for the government to address SA and VAW in general is to consolidate the laws that will address the acts of sexual assault perpetration. This means putting together all provisions of law based on gender issues. For example, the provisions of the sexual assault perpetration could be defined or elaborated together or explained together so as to follow one law.

### **Conclusion**

In Zanzibar, currently the problem of SA continues to be highly prevalent despite efforts in legal and social interventions at different levels. The weaknesses in law enforcement could be cited as one among the main reasons for this problem in the sense that national laws applicable under SA in Zanzibar is quite fragile. For example, Penal Act no. 6, 2018 provides for 30 years imprisonment or life sentence to perpetrators of rape, while the Criminal Procedure Act, no. 7 limits the regional courts to offer 7 to 14 years imprisonment. Having inconsistent safeguard of the rights of the married women such as the offence of marital rape, could be cited as one of the indicators of the said confusion and intricacy.

However, the laws are well facilitative and well moderate to the people but the mechanism of enforcing them has weaknesses both at the prosecution level and to the judicial trials hence increase in the sexual offences committed in Zanzibar. The complexities and complications of issues regarding SA as explained above are reflected in the current legal system and institutional frameworks.

### **Recommendation**

The study reveals that there is an urgent need to incorporate necessary amendments in the existing national laws governing prosecution of sexual offences to make them simple and easily comprehensible, the adoption of a single common law that will address SA and VAW cases and finally is to consolidate all the provisions of various enactments relating to sex crimes under one head or roof.

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