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**DISCUSSION PAPER ON “CRIMINAL LAW
AS A VEHICLE FOR THE PROTECTION OF
THE RIGHT TO PERSONAL INTEGRITY,
DIGNITY AND LIBERTY OF WOMEN”**

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PREAMBLE

“It must be made clear to men that the problem of male violence is not simply women’s problem. Men must take responsibility and begin to work towards change. The notion that “manhood” is proved by the extent to which a man is able to impose his authority and even inflict pain, on women must be challenged by men themselves. Rape and other forms of male violence feed on this notion” (Vide: Conventional Manhood: The Need for a Reassessment. By Jonah K. Gokora).

1.0 INTRODUCTION

- 1.1 Violence against women in all its manifestations, from wife battery, rape, incest, sexual harassment, sexual slavery, defilement of young girls, indecent assaults, abductions kidnappings for sexual purposes and kindred offences are basic Human Rights Violations. These abuses occur in every nation and are found at workplaces, streets, refugee camps, learning institutions and the homes.

1.2 This Discussion Paper is about issues arising from campaigns mounted by women-folk all over the world to raise awareness amongst women about their human rights and to sensitize (women) and men to make efforts to restore the status of women to be on equal footing with men by fighting against violence perpetrated by men against women. Our society has been able to raise the question of what has gone wrong with individual men only when a man rapes, when a man batters, when a man sexually violates or humiliates some woman for his pleasure.

2.0 Sexual and Domestic Violence Perspective

2.1 In this Paper the violence addressed to is twofold; that is, sexual and domestic violence. These acts are crimes which are morally and legally wrong. One could also say that this Discussion Paper is about human rights of women, i.e. the protection of the rights to personal integrity, dignity and liberty of women in Tanzania. The Discussion Paper examines the law as it is in our Penal Code and other laws. There will also be examination of the interpretation placed on each section of relevant laws by the courts. In the final analysis we shall ask ourselves whether or not there is need to reform the law as it is today.

2.2 In Tanzania violence against women is dealt with under various laws mainly the Penal Code especially Chapter XV

which deals with offences against morality. The offences mentioned therein humiliate, brutalize and inhibit women from full enjoyment of their liberty and other rights. Chapter XXIV of the Penal Code deals with offences connected with other crimes of violent nature e.g. assaults and batteries including violence generally and wife battering in particular.

“It behoves every man who values liberty of conscience for himself to resist invasion of it in the case of other”. (Vide Thomas Jafferson: To Dr. Ruth 1803).

2.3 Indeed, it is true that sexual offences and other acts of violence do impinge on the personal integrity, dignity and liberty of women. For it has been stated that every person is entitled to these rights. For dignity is a state of being dignified in mind, character or bearing and integrity is the state of being entire; wholeness; probity; honesty; uprightness, while liberty means freedom from bondage. [Vide Collins New English Dictionary].

“The ultimate end of all revolutionary social change is to establish the sanctity of human life, the dignity of man, the right of every human being to the liberty and well being” (Emma Golddman. My Further Disillusion, 1924).

3.0 The Legal Perspective:

“We have already agreed on certain basic principle; now is the time to put these principles into operation. All the time that TANU has been campaigning for Uhuru we have

based our struggle on our belief in the equality and dignity of all mankind and on the Declaration of Human Rights.” (See Nyerere: Independence message to TANU as published by Newspaper Uhuru)(1).

- 3.1 The tenets stated herein above are enshrined in our Constitution in Articles 12, 13, 15, and 16. Article 12 deals with freedom and dignity of all men while Article 13 provides for equality before the Law and prohibits torture or inhuman or degrading treatment. Article 15 provides for the right to personal freedom while Article 16 provides for the right to privacy and personal security.
- 3.2 By virtue of section 8 of the Interpretation of Laws Act 1996 the words importing the masculine gender include the feminine because the word man (homo) means human being and human being means both male and female.
- 3.3 Tanzania is a signatory to both the 1948 Convention on the Universal Declaration of Human Rights, and the Convention on Elimination of All forms of Discrimination Against Women.
- 3.4 Article 1 of the Universal Declaration of Human Rights states that:
“All human beings are born free and equal in dignity and

rights.”

This Article which has formed the basic principle on which the whole notion of Human Rights rests, embodies the spirit of egalitarianism and self determination. Henceforth, the right to equality and dignity has been the recurrent themes of all International Human Rights (Charters) instruments.

- 3.5 In the same lines, the African Charter on Human and Peoples’ Rights (1981), which most African Countries have ratified including Tanzania, states in its preamble that:

“Freedom, Equality, Justice and Dignity are essential objectives for the achievement of the legitimate aspirations of the African people.”

The contents of Article 1 of the Universal Declaration of Human Rights and African Charter and Peoples Rights have been incorporated in the Constitution of the United Republic of Tanzania, vide Chapter.....

4.0 The Patriarchal Perspective

- 4.1 Violence against women, both domestic and sexual discrimination at work places, women’s multiple responsibilities, the poverty of women are just few of the glaring examples. Article 19 of the African Charter states:

“All peoples shall be equal, they shall have the same rights. Nothing shall justify the domination of a people by another.”

However, a glimpse at the situation of women in Africa shows that the outlook is bleak and does not bode well for them.

This is because issues like violence against women, discrimination at work places, sexual harassment, sexual abuse of female (and children) traditions harmful to women (i.e. female circumcision), lack of consent on marriage; and wife battering have only recently been brought into focus but have not been effectively redressed thus depriving them of the constitutional right to security and dignity. At the same time it has been the custom for members of each clan to have reconciliation among themselves. The custom as this one encourages violation of human rights against women. People governed by such customs which encourage people to reconcile rather than go to the law enforcement agencies might perpetrate the violation of human rights against women. A further analysis of the kinds of violence against women and children will be shown.

- 4.2 The sexual offences and domestic violence committed by men against women is against the basic rights in our Constitution, the Universal Declaration of Human Rights, and the O.A.U. Charter on Human and Peoples Rights.

- 4.3 Apart from the basis of protection of women rights as human beings, being protection under the above held principles as enumerated above, these rights are specifically protected by the specific laws that protect womenfolk. Chapter XV of the Penal Code already referred to, forms the core of our Criminal Law. The Chapter creates offences connected with sexual violence while Chapter XXIV deals with offences connected with other crimes of violent nature, e.g. assaults and batteries i.e. including violence against women generally and wife battering in particular.

C H A P T E R I

1.0 VIOLENCE AGAINST WOMEN IN THE FAMILY:

- 1.1 Violence against women in the family includes battering, sexual abuse of female children in the household, dowry

related violence, femicide, sexual harassment, verbal abuse, psychological violence, confinement, traditional practices harmful to women. Despite existing legal provisions protecting women against abuse, women in Tanzania are victims of all forms of violence an issue which until recently was rarely discussed openly.

1.2 Research has shown that laws(2) governing domestic violence and sexual violence are quite specific in that they stipulate that it is a criminal offence for any individual to inflict injury, molest, assault or use threatening language against another individual(s) but most women are inhibited from free access to the legal process. This is caused by the following factors:

- (i) Insufficient exposure of women to contemporary world affairs.
- (ii) The question of insufficient literacy and lack of awareness of the Law.
- (iii) Customs which favour reconciliation rather than litigation and prosecution.
- (iv) Lack of focus on Women's multiple responsibilities.
- (v) Fear of the stigma related to the circumstances of sexual offences committed.
- (vi) Lack of seriousness by the law enforcement agencies.

- 1.3 In a survey conducted by the Tanzania Media Women's Association (TAMWA)(3) involving 300 women in Dar es Salaam (1990) on sexual harassment, the circumstances of the nature of offences committed discouraged 15 out of all 17 victims of rape and attempted rape from pressing charges as it would reflect badly on them. The two who had the courage to press charges and believed that the law would not only protect them, but would also bring the perpetrators of the crime to justice, were disappointed. Instead of being treated as the victims, their private lives were stripped bare and roles became reversed. This is also apparent in the Safari Reports from the Regions by researchers of the Law Reform Commission in 1995 and 1996.
- 1.4 In a survey conducted in 1989(4) in the three districts of Dar es Salaam on domestic violence, it was revealed that six out of every ten women have experienced violence either in the form of threats or shoving from their spouses/partners. Safari Reports from the Regions by Researchers of the Law Reform Commission discussed in this Paper also reflect the same experience.
- 1.5 In another survey(5) on sexual harassment (1990) also conducted in the three districts of Dar es Salaam over 90 per cent of the 300 residents interviewed admitted to having

being sexually harassed either through abusive language, groping, brushing against a woman's body, to outright assault. Such behaviour is prohibited and punishable under the law: section 135(3) and (1) of the Penal Code and Section 66 of the Law of Marriage Act, 1971 which provide:

“135(3) Whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman is guilty of a misdemeanour and is liable to imprisonment for one year”.

“66. For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.”

1.6 While section 135(1) of the Penal Code (Cap. 16) stipulates that:

“Any person who does violence against another person is liable to 14 years imprisonment.”

1.7 Most women may also not be aware that there are provisions within the law which protect them against battery, sexual harassment and other forms of abuse because culturally

some women have been brought up to believe that they are inferior, therefore it must be their fault and that they must have provoked their spouses into violence. And even those who may be aware of their rights, how many would have the courage to prosecute or litigate their cases. Even if they have the courage to do so there is still the fear that even in a court of law justice will not prevail because courts invariably are a domain of men.

- 1.8 On the other hand, since in Tanzania most families are extended, the culprit of violence is often the main bread winner for the entire family, and if he got imprisoned, the whole network of support would stop. And this tends to prevent woman from taking legal action and she would bow down to pressure rather than face possible ostracisation from her family. Thus, most women remain silent and endure the abuse.

2.0 Economic, Social and Physical Power Perspective

- 2.1 Violence against women is caused by the uneven power relationship between men and women. Therefore wives are not the only group of battered women. Women battering includes brothers beating their adult sisters, male colleagues beating their female colleagues, and even some sons beating their mothers, boyfriends beating their girl friends, etc. This is an issue which is basically based only on people with power, and power is both economical and physical as well as social and moral.

3.0 Gender, Custom and Cultural Perspective

“Gender has always been problematic all over the world, precisely because gender is a cultural concept and virtually every society around the world remains, in actual fact, patriarchal and sexist. Women everywhere are cheated, exploited, abused and killed by men of all colours, heights and shapes who regard them as second class citizens. But that does not make it right and cannot prevent us to work for change.” (Vide Journal on Social Change No. 40, July 1991 Harare Zimbabwe: Editorial).

3.1 Another aspect of violence is in the customary law which has been reflected in marriage where a woman is treated as unequal partner. In many communities a woman’s consent to marriage is not considered necessary and because of the bride wealth is given to her parents a wife is regarded a lesser partner in marriage. There have been many instances where a woman was inherited without her consent by the husband’s male relatives when the husband died.

3.2 With respect to women’s health, hazardous traditional practices such as early marriages and pregnancies, female circumcision, nutritional taboos, inadequate child spacing and unprotected deliveries, are realities which lead to maternal morbidity in present day Africa. Cultural practices have to a large extent been instrumental in the big number of female

dropouts in institutions of learning; lack of comprehensive family life education leading to teenage pregnancies, marriages at an early age sometimes as young as 12 years.

3.3 There has been a marked emphasis on traditional practices which push women into repetitive tedious and arduous work, especially the production of food, taking care of household chores as well as their reproductive functions. These multiple responsibilities have turned them into beasts of burden.

3.4 Although women are main producers, it is mostly men in the villages who take part in agricultural education, learn new techniques, use of modern tools and equipment which are provided by government through development programmes(6).

3.5 In the past, many of the gender patterns were found in education, for example girls being encouraged to take up the home economics subjects while boys are encouraged to take up science subjects; this trend reflected as well as sustained gender patterns in employment. Even in adult education and adult literacy campaigns, the methods used in implementing these programmes have been gender biased. Women are advised on how to improve their reproductive roles within the existing sexual division of labour, while men are taught improved methods of farming or animal husbandry along with reading and writing skills(7). This has inevitably led to an unequal

participation of women in decision making management in all levels and all matters.

3.6 In the majority of cases men predominate in jobs with their higher pay while women have been limited to jobs with lesser pay. Women's employment and involvement in wage/salary employment, agriculture and the informal sector is constrained by several factors, like women's relative lack of education and management skills, socio-cultural attitudes and the economic recession in the world.

3.7 Because of the women's relatively lack of higher education and training in management, women are not accorded opportunities in jobs that give recognition and influence and which ultimately lead to financially rewarding positions. Despite the ratification of International Conventions on Human Rights by most African countries, to-date there are still many discriminatory practices in the implementation of law and legislation in the regions. For example, the Civil Codes in many countries have not been adequately reviewed to amend/repeal those provisions which are discriminatory against women and to determine on the basis of equality the legal capacity of women, particularly the laws pertaining to marriage, inheritance, divorce, alimony and custody.

4.0 VIOLENCE AGAINST WOMEN WITHIN THE

COMMUNITY:

- 4.1 Violence includes rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- 4.2 The law in Tanzania is quite explicit on matters of domestic and sexual violence against women. Section 135 of the Penal Code provides that, any person found guilty of having unlawful/indecent assault against a woman will be liable to imprisonment for a maximum term of 14 years. While section 136 of the Penal Code provides that any person found guilty of defilement of a girl under the age of 14 years is liable to a maximum term of imprisonment for life.
- 4.3 Sexual violence is instigated by social forces and exists in various forms i.e mental, physical, environmental, etc. Sexual harassment and battering are among the worst forms of violence against women.
- 4.4 Some of the men who violate women sexually do so because they feel they can get away with it while women put up with it because they feel there is nothing they can do especially since the stigma attached to raped women is quite high.

C H A P T E R I I

1.0 THE STATE OF THE LAWS:

2.0 THE PENAL CODE (CAP. 16):

2.1 To demonstrate the gravity attached to the violence

against women by our society, as is also the case with the other countries, heavy penalties have been provided for under our Penal Code. For example the offences of rape(8), and attempted rape(9) carry maximum penalty of life imprisonment respectively with or without corporal punishment, while defilement of girls under 14 years of age now carries a minimum penalty of 20 years jail with or without corporal punishment(10). Indecent assaults on female is punishable with a maximum penalty of seven years(11)and abduction of a woman or girl for sexual purposes is punishable with a maximum penalty of seven years(12).

2.2 The Penal Code provides other offences of violence against women. These are insulting the modest of a woman; to have any unlawful carnal knowledge by threats or intimidation, false pretences/representations of any woman or girl detention of any woman or girl against her will with intent for unlawful carnal knowledge, incest by male and assault (battery) and unnatural offences.

2.3 Besides the afore stated penal provisions there are other laws touching on the issue of violence against women; for example, section 66 of the Law of Marriage Act, Act No. 5 of 1971 states:

“For the avoidance of doubt, it is hereby declared that

notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.”

3.0 THE CRIMINAL PROCEDURE ACT, 1985:

3.1 The Criminal Procedure Act, 1985 as amended contains provisions to protect sexual and other violence acts which are perpetrated by men against women. The Criminal Procedure Act, 1985 and the Law of Evidence Act, No. 6 of 1967 provide requisite guidelines as to how evidence shall be taken and accepted in the courts of law. In essence the two laws have some inhibiting provisions which incapacitate women to come forward to give evidence on certain sexual offences. For example section 186(1) of the Criminal Procedure Act states:

“The place in which any court is held for the purpose of inquiring into or trying any offence shall unless the contrary is expressly provided by an Act for the time being in force be deemed an open court to which the public generally may have access so far as the same can conveniently contain them save that the presiding judge or magistrate may, if he considers it necessary or expedient:

- (a) in interlocutory proceedings; or
- (b) in circumstances where publicity would be prejudicial to the interest of
 - (i) justice, defence, public safety, public

order or public morality; or

(ii) the welfare of persons under the age of eighteen years or the protection of private lives of persons concerned in the proceedings,

order at any stage of the inquiry into or trial of any particular case that persons generally or any particular person other than the parties thereto or their legal representative shall not have access to or be or remain in the room or building used by court.”

3.2 It is noted that courts of law hold hearings in open court.

This has been observed that this is an inhibiting factor because it has been argued that the agony experienced by woman victim of sexual assault cases before courts is of great magnitude to the extent that there is no difference between being raped and giving evidence as a key witness at the trial of her alleged rape except that this time it happens in front of a crowd, which will mostly be composed of men. It would not matter even if the crowd in court would be composed mostly of women because women, on account of social, and cultural upbringing are made to think that it must be the fault of the victim and that she must have provoked her partner into violence. The accused along with the crowd mostly will be entitled to hear the

forensic medical evidence, the description of the woman's or girl's genitalia, the marking on her nipples, the colour and size of her bruises on her buttocks and the presence of semen on her body, legs/thighs, clothes, etc. This can be tormenting on the part of an ordinary woman of good character when a victim of a rape is called upon to testify on such an incidence in an open court. Such a woman finds herself in a very inhibiting environment for her to tell all about the incidence.

3.3 As if this situation is not bad enough, there is evidence that magistrates, prosecutors, defence lawyers, and court clerks have not been in support of victims of domestic and sexual violence. More often than not they harbour a biased opinion against women in favour of men.

3.4 We have already seen that the law stipulates that these cases should as in other cases be tried in open courts and needless to state that this adds trauma to the victims of sexual offences because the cross-examination during the course of trials of sexual offences tend to instil a sense of shamefulness, sense of loss of good conduct, integrity, dignity and liberty. More often than not women are made to feel that they have failed to conduct themselves properly within the social norms, within the rules of the community in which they live and therefore it is taken before the eyes of the audience in the courts that it is their fault. Therefore the societal norms and the law as it is has been taken as impediment to prosecution of cases involving violence

against women generally and domestic and sexual violence in particular.

3.5 In a Paper presented to a Workshop held at Morogoro from 4th - 6th December, 1996 on Mechanism to protect and promote the Human Rights of women by the Tanzania Media Women's Association (TAMWA)(13) the following situations emerge: violence against women and children is now a global issue and in Tanzania, according to statistics compiled by the Ministry of Home Affairs between 1990 to 1995, the situation of violence against women and children is alarming. The violence involves battery, sexual harassment, rape, defilement and indecent assaults. Research by the Law Reform Commission in the Regions of Tanzania Mainland in 1995 and 1996 has confirmed this situation.

3.6 Defilement is an act whereby a person carnally knows a girl under the age of 14 years. These days incidences of defilement are rampant. In newspapers today in Tanzania reports are abound that even as young as three months old have been defiled. This is indeed lustfully ridiculous. But it would appear that the incidences of rape and defilement are practised all over the world today. There have been public outcries for the Government to take stringent measures against such outrageous crimes.

3.7 The law to protect women and girls against these offences as already stated is very clear indeed. However, it is not always easy for women and girls to have recourse to the law because there are other circumstances which must be taken into consideration. For instance there is a provision in the law that there should be reconciliation in certain cases. Section 163 of the Criminal Procedure Act states:

“S. 163. In the case of proceeding for common assault or for any other offence of personal or private nature the court may, if it is of the opinion that the public interest does not demand the infliction of the penalty, promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of the proceeding or on term of payment of compensation or other term approved by the court, and may thereupon order the proceedings to be stayed.”

3.8 It is contended that offences of sexual violence and assaults fall under this category because their commission may not be without reason. Furthermore, it is the attitude of mind arising from socio-economic situations which leaves women with very few options available to them as it has been observed:

“They are economically dependent on their men. In addition neighbours, relatives and friends have often

discouraged a woman from pressing charges against a violent husband because it would reflect badly on her in the community. Women are not aware that there are stipulations within the law which protect them against battery, sexual harassment and other forms of abuse because culturally women have been brought up to believe that they are inferior, therefore it must be their fault and that they must have provoked their partners into violence. Women also fear stigma if they take legal action against violence. Families have been known to close ranks against a battered woman who wishes to press charges, and quite often these have included members of her own family. Most women also do not report cases of domestic violence to the police because they are ashamed and often explain the injuries they sustained during an attack by saying that they fell down or that they bumped against door or furniture.(14)”

3.9 In Tanzania, a number of pressure groups notably NGOs have started activities in the last five years to raise awareness and concern on discriminatory practices and also to lobby the government to revise those laws which are discriminatory to women.

3.10 These groups like TAMWA, The Tanzania Law Society, The Tanzania Women’s Lawyers Association, The Media

Women's Association of Tanzania, The Women's Association Research and Documentation Project of the University of Dar es Salaam, SUWATA, Zanzibar Legal Aid Body, etc. have come up with various programmes in the implementation of the initiative to remove discriminatory practices against women.

4.0 THE EVIDENCE ACT, 1967:

4.1 Although Courts in Tanzania have all along strictly required corroboration in all sexual offences, this is a matter of practice rather than a matter of Law. In fact the Evidence Act, 1967 as amended under Section 143, provides that no particular number of witnesses shall be required for the proof of any fact. Section 143 reads:

“Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.”

4.2 Equally the Evidence Act under Section 127 has given full value to the evidence of a child of tender years, i.e. below the age of 14 years in all criminal proceedings. Section 127(2) provides:

“Where in any criminal cause or matter any child of tender years called as a witness does not, in the opinion of the court, understand the nature of the oath his evidence may

be received, though not given on oath or affirmation, if in the opinion of court, to be recorded in the proceedings, he is possessed of sufficient intelligence to justify the reception of his evidence and understand the duty of speaking the truth.”

Section 127(4) provides:

“Notwithstanding any rule of law or practice to the contrary, the evidence of a child of tender years received under subsection (2) may be acted upon by the Court as material evidence corroborating the evidence of another child of tender years previously given or the evidence given by an adult which is required by law or practice to be corroborated.

C H A P T E R I I I

1.0 THE PROBLEMS CONNECTED WITH THE LAW

1.1 However serious our society takes such offences to be,

the enforcement of the law has, in practice, gravely watered down the same, through inadequate sentencing, gender-biased requirement of corroboration for proof of such offences, requirement of testimony in open court by the victim, very restricted construction of an attempted rape and want of mandatory compensation provisions for the victims of such crimes. All these have rendered the intended protection of women's right to personal integrity, dignity and liberty under our Penal Code, very ineffective. Such situation has been contributed partly by our courts and partly by our Legislature.

2.0 The Role of the Courts:

2.1 It is regrettable that the practice of our courts in sentencing in respect of offences of this type has often times not at all reflected the seriousness our society attaches to such offences as expressed in our Penal Code's penalty provisions. This is often the case with magistrates in subordinate Courts, who also sometimes find support from some judges of the higher courts. That seems to be due (i) partly to the limitation on sentencing powers of the subordinate courts in respect of non-scheduled offences (i.e. offences for which no minimum sentence has been prescribed) where a custodial sentence may not exceed five years as provided for under S. 170(1)(a) of the Criminal Procedure Act, 1985, on a single count, or eight years in the case of more than one count(15); (ii) partly due to non-observance or ignorance of the provision of the section which empowers a subordinate court to commit a convicted person to the

High Court for sentencing should the subordinate court consider that a higher sentence than it has the power to impose ought to be imposed; (iii) partly due to want of proper appreciation of the nature and gravity of the offences on the part of some of the magistrates and judges; (iv) partly due to corruption.

2.2 In this regard it could be said that some magistrates would even try such offences without seriousness. This is often reflected by the manner and type of questions put to the complainant woman. As also once observed by the Victoria (Australia) Law Reform Commission, whether a wife or prostitute, women are, in many cases, regarded as being for the sexual use of particular men(16).

2.3 This is certainly a wrong attitude towards such offences. For the criminal sanction is not against sexual intercourse as such. That could, indeed, be said to be a natural act expected between man and woman in conformity with the order of nature in the same way as to do any work is a human act expected of any human being. Yet forced labour is what is the subject of the criminal law sanction. What is at stake here in both cases is the violation and disregard of a person's freedom of choice - the power to choose and pursue what is seemingly good for one's wellbeing or promotion of one's happiness, which freedom is ultimately the basis of accountability for one's actions in our society. Such offences are, in effect, an interference with

or disregard of the humanity of the woman concerned by those who so perpetrate such sexual offences against them. As Sullivan once put it(17):

“When a woman has been sexually violated she has experienced a crime not only against her body but also against her psyche and her whole self. She has for a period of time been cut off from the sense of cohesion and control that to a greater or lesser extent is the ‘raison d’etre’ of all human beings”.

2.4 Grave as such offences are it is therefore vital that our courts and the law should clearly demonstrate the same to both offenders and potential ones.

3.0 The Role of the Legislature:

3.1 For many years our nation has clearly demonstrated its serious concern over acts of embezzlement of public funds, robberies, burglaries, cattle thefts and acts of economic sabotage. That has been done by the enactment of the Minimum Sentences Act, 1963(18), which was later repealed and replaced by the Minimum Sentences Act, 1972(19), providing for minimum sentences that courts have to impose upon convicted persons in respect of offences specified therein. We had also the enactment of the Economic Sabotage Act 1983(20) under which a special Anti-Economic Sabotage

Tribunal(21) was set up to try Economic Sabotage offences. It was presided over by a judge of the High Court sitting with two lay members. Its decision was of the majority opinion. The Tribunal however was characterized by the absence of representation by legal counsel as this had been prohibited under the Act.

3.2 Following criticism by the Bar and Bench, the Act was repealed and replaced by the Economic and Organized Crimes Control Act, 1984(22) which was subsequently amended in 1987(23) and 1989(24). Under the Act, the High Court, sitting as an Economic Crimes Court(25), has exclusive jurisdiction over offences specified as economic crimes(26). However an Economic offence that appears to be not all that serious may be transferred for trial to any subordinate court under a certificate of the Director of Public Prosecution (DPP)(27).

3.3 Yet all such legal measures have been in respect of economic or property offences, so to speak. Economic stability and prosperity is for the promotion of the wellbeing of a given society - which, in effect, is the wellbeing of the humanity of the human persons who constitute the society.

3.4 It follows, therefore, that as compared with the economic wellbeing, the humanity of the human person is of paramount importance. Thus to the extent our nation has

demonstrated its serious concern on the rising rate of economic crimes which prompted Parliament to enact laws that now impose minimum custodial sentences of up to 30 years(28), it ought, in our view, have viewed offences against humanity itself - such as rape - with even greater concern and harsher penalties. This then calls for the review of the state of our Criminal law as a vehicle for the protection of the very humanity of our women-folk-their dignity, integrity and liberty, as a whole.

4.0 SHORT-COMINGS OF OUR LAW:

4.1 What, in our view, appears to be shortcomings in our law in providing effective protection of the dignity, integrity and liberty of the female members of our society in respect of sexual offences, fall under four major aspects: sentencing, evidential and procedural requirements, and compensation aspects.

5.0 THE SENTENCING ASPECT:

5.1 As alluded to earlier, although under our Penal Code, the offences of rape, attempted rape, and defilement of a girl under 14 year, carry a maximum penalty of life imprisonment, that, in practice, has, except for the offence of defilement, been severely whittled down.

5.2 In the majority of cases decided by subordinate courts the range of lawful sentences have been a fine, (in a few

extreme cases), and imprisonment for five years. Example of a few such rape cases which have come to our knowledge where a sentence of fine was imposed upon the accused are the cases of R.v. NYERERE MAELE(29), and R.v. BAHATI s/o HALINGA and 4 OTHERS(30). The two cases were decided at Mbozi District Court within Mbeya Region. In both cases the presiding magistrate was the same. In the first case the court imposed a sentence of a fine of Shs.1,000/= . In the second case a sentence of a fine of Shs.5,000/= was imposed on each of the five accused. Ironically the learned magistrate did not mince his words in remarking, in the process of sentencing, that the offences were very serious.

5.3 In the exercise of its supervisory powers, when the two cases came to the notice of the High Court, Mbeya Registry, in the course of inspection of such court's fourningtly criminal returns, the records of the two cases were called for. They were then revised and sentences were enhanced to five years imprisonment in each case. Let it be pointed out here that were it in exercise of appellate jurisdiction, the High Court would have had the discretion of imposing a higher sentence than the five years jail(31). However, when exercising revisional jurisdiction the sentencing power of the High Court is limited to the maximum sentencing powers of the subordinate court(32).

5.4 Now to demonstrate, in general, the problems under

discussion, cases appearing in Appendix A to this paper have been collected from the court of Principal Resident Magistrate, Kisutu/Kivukoni areas, within the City of Dar es Salaam, to serve as a sample. It covers a period of three years, that is, from 1989 to 1991.

- 5.5 From such Appendix it becomes crystal clear that sentences imposed in respect of the various sexual offences rarely exceeded the five-years jail mark. And it is worth pointing out that where a sentence exceeded the five-years term of imprisonment, it should be regarded as being unlawful, so long as it was not imposed by the High Court in exercise of its sentencing power in cases where an accused person is committed to the High Court for sentencing. This is so because offences such as rape, attempted rape, defilement of a girl under 14 years,(33) and indecent assault, do not fall under the Minimum Sentences Act 1972, in which case a subordinate court may impose a sentence of up to ten years of imprisonment(34). However the maximum prison penalty that a subordinate court may impose in respect of any other offence is five-years as provided for under S. 170(1)(a) of the Criminal Procedure Act, 1985. The imposition of such sentences in excess of what is authorized by law is often times out of either sheer enthusiasm or deliberate non observance of the law by the presiding magistrate.

5.6 It is also noteworthy that out of a total of 62 sexual assault cases it is in 21 cases only that conviction was secured, representing about 33.7% of all cases filed and determined by the court. The remaining 41 cases ended up into either acquittals or withdrawals. This represents about 66.3% of all the cases filed and determined by the court.

5.7 We also learn from this Appendix that young girls between the ages of 14 and below, constitute a greater number of victims of sexual assaults than the older women. There were 27 cases of defilement of girls under 14 years old, representing 43.5% of all the cases. On the other hand, there were 24 rape cases representing 38.7% of all the cases and 11 cases of indecent assault representing 17.8% of all the cases. This shows that our young daughters are the ones who fall easy prey. This is partly due to their physical weakness and partly due to immaturity and therefore lacking proper appreciation of the nature of the act which then makes it easier for them to get lured into engaging in such acts.

5.8 It is also to be noted that the majority of the perpetrators of such sexual offences are the sexually most active young men ranging between the ages of 14 years and 35 years. Within this age-group there were 37 accused persons representing about 59.7% of all the accused persons. Those aged above 35 years were 25 accused persons, representing 40.3%.

5.9 It is also interesting to note that of the victims of rape and indecent assault, the majority were again those within the age group that is sexually most active, that is between the ages of 14 and 35 years. These were 18 in number while those above the age of 35 years were only 4. Eight others had their age not recorded and therefore unknown. But judging from the age of their assailants it is most likely that their age, too, did not cross the 35 years age mark.

5.10 It will also be noted that out of 62 sexual assault cases, 17 rape cases were accompanied with violence, while 7 of them were non-violent; 10 defilement cases were accompanied with violence while 17 of them were non-violent; and one case of indecent assault was accompanied with violence while, 10 such cases were non-violent.

6.0 THE EVIDENTIAL ASPECT:

6.1 One factor that is most known to impede effective application of our criminal law as a means for the protection of the dignity, integrity and liberty of women, is the strict, and we may add, conventional requirement of corroboration in all sexual offences. No doubt, everyone of us knows that acts of rape, defilement and indecent assaults, are not done in public. They are among the most clandestinely committed offences. The difficulty to assemble one's witnesses to such type of offences can thus be easily appreciated.

6.2 Yet courts in this Country, as a matter of practice, cultivated out of prudence, have all along strictly maintained, to the extent of rendering it as a rule of law, that there can rarely be a conviction and even most rarely can such a conviction of a sexual offence be sustained by an appellate court, in the absence of corroboration. In this regard the following cases will help to demonstrate such stance.

6.3 In the case of MCHELENGWANJINGI S/O MASALA VR. (1968) HCD 370 four accused persons were convicted of the offence of rape by a subordinate court. It was in evidence that the accused persons had been drinking together and that all of them were drunk. At mid night one of them carried away the complainant. The complainant also testified that the 1st and 2nd accused then had intercourse with her by force and that later the 3rd and 4th accused, had intercourse with her, but she was too tired and drunk by that time to resist. Another prosecution witness saw the 3rd accused having intercourse with complainant and a torn piece of her clothing was found at the scene. The 1st and 3rd accused persons admitted to have had intercourse with complainant but claimed that she had consented. The 2nd and 4th accused denied having had intercourse with the complainant.

6.4 On appeal to the High Court by the four appellants,

Seaton, J, as he then was, quashing the convictions of the four appellants, gave the following reasons:-

- (1) that there was no corroboration of complainant's testimony that the 2nd and 4th accused had intercourse with the complainant;
- (2) that there might be authority supporting a conviction for rape when the complainant is too drunk to resist. (Citing R.V. Camplin (1845) 1 Cox CC 220). However, in the present case there is no corroboration of complainant's testimony that the intercourse with the 1st and 3rd accused was without her consent. Neither the torn piece of clothing nor the fact that she was drunk would necessarily negative the fact of her consent.
- (3) that the trial magistrate also failed to consider the possibility that because of their drunkenness the accused had no intention to commit rape and mistakenly believed that the complainant had consented.

6.5 A closer examination of the decision of the High Court judge makes it appear to us to be of the type that placed no regard on the credibility of the evidence of the victim in such cases. It seems to have proceeded on the assumption that unless corroborated, all that was said by the victim was a lie.

The trial court believed the victim as having told the truth. There was nothing that went to contradict her evidence. In fact, it will be noted that in each of the groups of the appellants mentioned to have raped her, one admitted to have had sexual intercourse with her though claiming to have done so with her consent. No reason was advanced by the appellate court as to why the story of the complainant should be discredited as against those accused persons who had denied to have had any sexual intercourse with her other than that there was no corroboration of her story to that effect. Yet it was not denied by any of such accused persons that they were together with the two other accused persons when they had liquor together with her and when she was ravished.

6.6 In our view, all such facts should have weighed more against them as to give credibility to the evidence of the complainant. Furthermore, the view of the learned judge that the trial magistrate failed to consider that, because of their drunkenness, the appellants had no intention to commit rape and mistakenly believed that complainant had consented was, in our view, driving too much in favour of the appellants. Here the question is: Can there be a mistake of fact by a drunken person? To answer this question the provision under our Penal Code that deals with the legal principle of mistake of fact must be examined. Section 11 of our Penal Code provides:

“A person who does or omits to do an act under an honest

and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.” (Emphasis supplied).

6.7 It is evident from the above provision that for a mistake of fact to exist, one must show that he so made the mistake under an honest and reasonable belief that the state of things were as he believed. Yet it is common understanding that a person labouring under state of intoxication has his power of judgement or reasoning, impaired by the alcoholic drink. He therefore often behaves unreasonably. Under such circumstances he cannot be heard to have entertained an honest and reasonable belief on the existence of any set of things. Thus in the case under discussion, the learned judge gave the benefit to the appellants to the prejudice of the interest of the complainant woman, which they did not, in law deserve. They had no basis for and were, in fact, incapable of forming an honest and reasonable, but mistaken belief that the complainant, through want of physical resistance on account of her drunkenness, had consented to having intercourse with them.

6.8 The other factor to be considered is the learned Judge’s off-hand rejection of the fact that because of her state of drunkenness, coupled with the existence of her torn piece of

cloth, that went to negative her alleged consent to intercourse. One wonders whether with such stance courts can really be taken to apply the criminal law for the intended protection of the dignity, integrity and liberty of women!

6.9 In the case of R. v. RASHIDI MOHAMED (1968) HCD 269, the accused was convicted by a subordinate court of having committed an unnatural offence c/s 154(1) of the Penal Code. There was ample evidence that a brutal rape per anus had been committed upon the complainant, an elderly woman, but the only evidence connecting the accused with the offence was the testimony of the complainant herself.

6.10 On appeal, Georges, C. J., as he then was, allowing the appeal, held:

- (1) That there is a general rule that corroborative evidence is required to support the testimony of the complainant concerning a sexual offence.
- (2) That if a magistrate notes the absence of corroboration, warns himself of the danger of convicting in the absence of corroboration, but nevertheless finds that the evidence is so convincing that he feels it safe to convict, it is possible to support the conviction. However, no such course

was followed by the magistrate in the present case.

(3) Conviction was accordingly quashed.

6.11 In this case again the poor old woman's credibility in her evidence was torn apart simply because she alone had testified for the prosecution and the trial magistrate had not warned himself against the danger of convicting in absence of corroborative evidence, though, undoubtedly, he so convicted the appellant upon believing the complainant's testimony. In fact, the appellate court did not observe any weak points in the complainant's evidence. Yet it is the power of the first appellate court to review and assess the evidence at the trial on its own, and form its own opinion about it. That the court did not find fit in cases of this kind. What a shock this must have been to the poor old woman and a licence to the would be rapists!

6.12 Further that, for a Court to convict of a sexual offence in the absence of corroboration and even rarer still an appellate, tribunal to uphold such conviction, there must be a very strong case to justify a conviction as decided by Biron, J(as he then was) in the case of *ABBAS S/O RAMADHANI V.R.* (1969) HCD 226.

6.13 In that case, the appellant was convicted by a subordinate court of the offence of rape and was sentenced to two

years of imprisonment and twelve strokes of corporal punishment. It was proved that one morning, a party of three women and two men including both the complainant and the accused person, went out into a sisal plantation to cut firewood. While there they separated and lost sight of each other. Then later while out of the sight of the others, appellant approached complainant, caught her and demanded sexual intercourse. Upon her refusal, appellant threatened to thrash her with the panga he was then carrying. She was then carrying a child with her on her back. Appellant took away the child, put it on the ground and then after removing his trousers he pushed her to the ground and had intercourse with her. She could not cry out for help out of fear following appellant's threats upon her life with his panga and because her mouth was also covered by appellant.

6.14 After raping her, the appellant ran away. The complainant immediately ran and reported the incident to her colleagues, who also confirmed such report in their testimony before the trial court. Both the complainant and the appellant were then medically examined the same day. They were found to have both engaged in sexual intercourse, within hours of such examination. It was also found that the complainant had bruises on her thighs and there was clotted blood from her vagina.

6.15 On appeal and upon such facts, his Lordship (may his

soul rest in peace) had this to say:

- (1) In *Yotamu Mtweve and two others V.R. (Crim. Apps. No. 368 of 1969 unreported)*, I upheld conviction of the three appellants upon being satisfied that apart from the magistrate having fully directed himself in his judgement on the need for corroboration, but proceeded to convict the accused of the offence of rape in the absence of corroboration upon being fully convinced that the complainant had told the truth, there was also considerable supporting evidence, which, though it did not constitute corroboration as such, was strongly confirmatory of the complainant's evidence. In this instant case, however, the magistrate has not directed himself on the need for corroboration.
- (2) It is rarely that a court will convict of a sexual offence in the absence of corroboration, and even rarer still that an appellate tribunal will uphold such conviction. The requirement of corroboration in sexual offences is a rule of practice and although it has been elevated, particularly in this part of the world to almost, if not altogether, a rule of law, the fact remains that it is a rule of practice, and corroboration is not in law, nor its absence fatal to a conviction. But there must be a very strong case to justify a conviction in the absence of corroboration.

- (3) The evidence establishes that, the complainant and appellant went out together in a party and that whilst cutting firewood the individual members were out of sight of one another. The medical evidence establishes that both had sexual intercourse at about such time. The Police evidence would also confirm that the scene pointed out by the complainant appeared to bear out that an incident of the nature described by the complainant had taken place there. And the medical evidence as to the injuries on the complainant would appear to negative consent. The appellant disappeared when the complainant made her complaint to the other members of the party. It may well be argued that even if some of these factors in isolation do not constitute corroboration of the complainant's evidence, do connect the appellant with the offence.
- (4) On the assumption that the attendant factors even in combination do not constitute corroboration in law, I propose to consider whether the conviction could be upheld even in the absence of corroboration. (After recapitulating the above facts)... The question poses itself why should this court now interfere with this instant conviction for a sexual offence because of the absence of corroboration, when, as I think sufficiently demonstrated,

all the factors which render it dangerous to convict on sexual charge ... without corroboration are absent in this case...

Though it cannot be overstressed that magistrates should always consider the question of corroboration and warn themselves of the danger of convicting in the absence of corroboration, in the particular circumstances of this case for the reasons I have attempted to set out I am not persuaded that this court would be justified in interfering with the conviction.”

6.16 What comes out from the above case is that the requirement of corroboration in sexual offences is only a rule of practice, founded upon the wisdom and prudence of courts. Nevertheless, it should not be applied so strictly as to render it appear to be a rule of law, so that in the event corroboration is not found in a given case, and the trial court has overlooked to warn itself before convicting an accused person of such an offence, it should not follow, as day follows night, that on appeal the conviction will have to be quashed.

6.17 Rather, in absence of such corroboration, despite the failure of the trial subordinate court to warn itself on the danger of convicting someone of a sexual offence without corroboration, the appellate court should still exercise its power

of reviewing the evidence before the trial court. Should it be satisfied upon such review of the evidence before the lower court that in the light of the evidence available there was no danger for any failure of justice having been committed, then the conviction of the trial court should not be disturbed. This therefore, goes a long way in balancing an otherwise lopsided stand of the courts in this country as exemplified by the two cases considered earlier.

6.18 That however, does not really solve the problem. All that it amounts to, is to create another approach on the issue of corroboration in sexual offences: one being for the automatic rejection of the complainant's case in the absence of corroboration where the trial court has convicted an accused person without warning itself of the danger of passing such conviction; and the other being that notwithstanding the failure of the trial court to so warn itself, the first appellate court will not interfere with the conviction on being satisfied, upon review of the evidence before the trial court, that there was no danger at all of there having been a failure of justice consequent upon such conviction.

6.19 Yet section 143 of the Evidence Act, 1967, as amended by Act No. 19 of 1980 provides:

“Subject to the provision of any other written law, no

particular number of witnesses shall in any case be required for the proof of any fact.”

With such provision one would have expected that courts would, as was in the case of *ABASI S/O RAMADHANI* cited above, treat the evidence of the victim of sexual offences, if she turns to be the only witness, with such caution as is judicially appropriate in any other case where the complainant turns out to be the only witness. It is time that this strict requirement by the courts that no conviction of a sexual offence will stand unless corroborated, is abandoned, either legislatively or through changed attitude on the part of our judges.

- 6.20 True, precaution must be there but need not be different from what is normally taken in respect of witnesses in other cases. For instance, prior to the amendment of our Evidence Act in 1980, it was the law that no conviction could proceed from the lone evidence of a child of tender years, unless there was corroboration of the same with some material evidence of an adult person implicating the accused. The evidence of another child of tender years could not provide such corroboration in so far as, it, too, required corroboration. That has now changed. For, as in the case of a victim of a sexual offence, there has been no scientific proof that the evidence of a child of tender years is, in most cases, all lies. Following the 1980 amendment of the Evidence Act the position now in

Tanzania is that courts may now convict an accused person on an uncorroborated evidence of a child of tender years, i.e. one aged 14 years, or below, and the evidence of a child of tender years may now be corroborated by the evidence of another child of tender years(35).

6.21 This, however, will only be possible where the child of tender years has been able to give evidence on oath in cases where he/she has been found by the court to understand the nature of an oath; or where he/she is found to be possessed of sufficient intelligence and to understand the duty of telling the truth. That, we think, sufficiently demonstrates the problem of corroboration in sexual offences in our country.

6.22 The other evidential aspect that thwarts efforts to provide effective protection of our women's right to personal integrity, dignity and liberty in relation to sexual assaults is the court's construction as to what constitutes an attempted rape. The line of authorities, some of which have been hereinafter cited, show that it is extremely difficult to prove the offence of an attempted rape. What is in often times charged as attempted rape does, when proved, end into the substitute conviction of the offence of indecent assault. Bearing in mind that the offence of attempted rape does, under our law, carry a maximum penalty of life imprisonment, and the offence of indecent assault carries a maximum penalty of fourteen years of imprisonment, in effect,

therefore, the frequent substitution of the offence of indecent assault for the offence of attempted rape, tends to undermine the deterrent effect that a conviction of the offence of attempted rape, with the probable attendant sentence of life imprisonment, would otherwise have upon the perpetrators of such sexual offences.

6.23 Let us now examine what the law is and what the courts say about the offence of attempted rape. Section 380 of our Penal Code defines an attempt to commit an offence in the following and we quote:

“When a person, intending to commit an offence begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such extent as to commit the offence, he is deemed to attempt to commit the offence.

It is immaterial that by reason of circumstances not known to the offender it is impossible, in fact, to commit the offence.”

6.24 Now as to what our courts say about attempted rape, the following cases will demonstrate. In the case of R.v. HARUNA S/O IBRAHIM (1967) HCD 76, the accused was

convicted of the offence of attempted rape. It was proved before the trial court that the accused had dragged the complainant woman to a ditch, placed his hand over her mouth and pulled down her underclothes while lying on top of her. On noticing a passerby observing him, the accused fled away. There was no evidence that at the time of fleeing he had undressed himself.

6.25 When the record of the lower court was called for and revised by the High Court, it was held thus:

“The acts of the accused did not constitute attempted rape, since he had not yet undressed. Rather the acts constituted mere preparation of that crime. (Citing the case of Adamu Mulira v. Regina (1953) XX EA. C. A. 223). The facts did, however, constitute the crime of indecent assault.”

6.26 In the case of GAMAIYO s/o MALAU v.R (1968) HCD 228, the appellant had been convicted by a subordinate court of the offence of attempted rape. It was proved by the prosecution that the accused threw down the complainant woman; threatened her with a knife and tore off her underpants. The complainant caught appellant by his private parts and prevented him from unbuttoning his pants. At this point an alarm was raised and the appellant ran away.

6.27 On appeal, Platt, J, as he then was, (quoting from Adamu s/o Mulira v. Regina, 1953 EACA 223) held thus:

“To constitute an attempt to rape there must be evidence of an attempt to have sexual connection with the woman notwithstanding her resistance. In the instant case we feel some doubt whether the learned trial judge fully appreciated the necessity of finding an intention to have sexual intercourse at all costs notwithstanding any resistance on the part of the woman plus an attempt to put this intention into effect.”

6.28 In the case of BAKARI S/O JOSEPH v.R (1969) HCD 225, the appellant was convicted of the offence of a attempted rape and sentenced to 18 months of imprisonment. It was proved by the prosecution before the trial in the subordinate court that appellant had pushed the complainant woman down who then fell on grass near a path. He then held her right hand and pulled her two pieces of Kanga, leaving her wearing only one piece of Kitenge cloth. He tried to pull it out and in doing so he pulled her legs apart. He then stooped up and started to unbutton his trousers, when the complainant escaped and raised an alarm. She thought he wanted to kill her and she was resisting.

6.29 On appeal against conviction, Bramble, J, as he then was,

held that appellant's action, should be considered as mere preparation and could not support a conviction for attempted rape. A conviction for indecent assault was then substituted.

6.30 What then can we say about the decisions in the three above cases on attempted rape. We propose that before examining such cases a word should be said about the major ingredients of an attempt to commit a criminal offence as provided for under S. 380 of the Penal Code quoted above.

These are the following:

- (a) an intention to commit an offence;
- (b) doing something to put such intention into execution;
- (c) by means adapted to its fulfilment;
- (d) manifesting such intention by some overt act;
- (e) failing to fulfil such intention to such an extent as to commit the offence.

6.31 In an attempt to commit an offence, the intention to commit a particular offence can be manifested either by an express statement by the accused to commit such an offence or by inferring the same from the accused overt act done in the course of executing such intention. For such inference to be made, the overt act must be one that is sufficiently proximate as to enable an onlooker to conclude that the person so doing such

act must have intended to commit that particular offence and nothing else.

6.32 As was said in the case of R.v. EAGLETON(36), per Parke, B,
“Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are.”

6.33 F.B. Sayre, in his article “Criminal Attempts” (1928) 41 Harv. L.R. at p. 843, has this to say(37):

“For all indictable attempts, then the defendant must be proved to have intended some objective in fact criminal but to have failed in the accomplishment of his objective. The defendant’s failure may have been due to any one of several different reasons. In the first place, it may have been because the defendant was interrupted from completing all his intended acts, which would, had they been completed, have resulted in an accomplished crime. This group of cases involves as a general rule no very intricate legal problem, but rather a nice question of judgement as to whether the defendant’s acts were of such a preliminary nature as to constitute mere preparation for his intended crime - a mere setting of the stage so to speak - or whether they have come sufficiently close to an

accomplished crime to constitute an indictable attempt. Something more than mere preparation or planning is essential...

...“The line between preparation and attempt, however, must at best depend largely upon the particular circumstances of each case - the seriousness of the crime attempted, and the danger to be apprehended from the defendant’ s conduct. Since the extent to which criminal law may justifiably encroach upon and restrict the freedom of and liberties of the individual varies directly with the extent to which social and public interests are endangered, it follows that the more serious the crime attempted or the greater the menace to the social efforts on the part of the defendant or others, the further back in the series of acts leading upon to the consummated crime should the criminal law reach in holding the defendant guilty for an attempt. For instance, the mere placing in joke of a harmless substance known to be comparatively harmless in food which it is expected the victim will eat but which in fact he does not come near, might be held not to constitute an indictable attempt to commit a simple assault, whereas under an indictment for murder the same court might well hold that, the placing of a harmless substance in the victims food in the belief that it is poison and with the intent to kill, does constitute an indictable attempt. In the

language of Mr. Justice Homes, ‘As the aim of the law is not to punish sins, but is to prevent certain external results, the act done must come pretty near to accomplishing that result before the law will notice it... Every question of proximity must be determined by its own circumstances and analogy is too imperfect to give much help. Any unlawful application of poison is an evil which threatens death, according to common apprehension, and the gravity of the crime the uncertainty of the result, and the seriousness of the apprehension coupled with the great harm likely to result from poison even if not enough to kill, would warrant holding the liability for an attempt to begin at a point more remote from the possibility of accomplishing what is expected than might be the case with lighter crimes: ‘Commonwealth V. Kennedy 170 Mass.18(1897).

“It is thus manifestly impossible to lay down any mechanical or hard and fast rule for the drawing of the line between preparation and indictable attempt; and such efforts in this directable ‘the last proximate act’ doctrine must be unhesitatingly rejected.”

6.34 Williams, at p. 623, puts the argument in the following terms:

“The requirement of proximity refers to the sequence of

events leading to the crime that the accused must have progressed a sufficient distance along the intended path. It follows that if he has done the last act that he intended to do in order to effect the crime, his act is necessarily proximate.”(38)

6.35 And in the case of *ORIIJA v. I.G.P.* (1957) N.R.N.L.R. 190 Smith, J., as he then was, had this to say, among other things(39):

“But it is not necessarily the last act in every case which proves the attempt. All that is required is an act immediately connected with the particular offence which clearly shows that the offender was attempting to commit it. That is what section 4 of the Criminal Code requires, i.e. an overt act which clearly manifests the intention but which does not amount to its fulfilment...

The test in *EAGLETON* is applicable to section 4 of the Criminal Code because it is necessary to ascertain the acts immediately connected with the crime, in order to decide which overt act or crime. But a more practical test is that suggested by the learned author of *RUSSELL ON CRIME* (10th Ed.p. 1790): ‘the prosecution must prove that the steps taken by the accused must have reached the point when they indicate beyond reasonable doubt what was the

end to which they were directed!”

6.36 Now in the light of the above principles what can be said about the three cases under discussion? In the first place, we take it to be that the accused acts of assaulting the complainant women and throwing them down at isolated places were means adapted to the fulfilment of the accused intentions. For the intention of raping them could not be fulfilled unless and until the complainant women lay on the ground. As to the overt acts, such were, in the case of HARUNA IBRAHIM, the pulling down of her underpants, lying on top of her; in the case of GAMAIYO MELAU, the tearing off the complainant’s underpants, who then caught hold of accused’s private parts which then prevented him from unbuttoning his pants; and in the case of BAKARI JOSEPH, the pulling off of her apparel and while the complainant’s legs had been pulled apart and the unbuttoning of the accused’s trousers.

6.37 In our view and in the words of Smith, J., above cited, such acts pointed out as overt acts were such that they were immediately connected with the offence of rape and, therefore, in the words of the learned author of RUSSEL ON CRIME referred to above, the prosecution did prove that the steps taken by the accused person in either of the three cases reached the point where they indicated beyond all reasonable doubt that the end to which they were directed was rape.

6.38 As pointed out earlier, there is no doubt as to the seriousness our society attaches to the offence of rape and other allied sexual offences. In the circumstances, we would go by the proposition of the learned author, F.B. Sayre, above cited, that bearing in mind the seriousness of the crime of rape it demands the further back in the series of acts leading up to the consummated crime should the criminal law reach, in holding an accused person guilty for an attempted rape. It should, therefore, be sufficient to hold someone guilty of the offence of attempted rape where by overt acts manifested by him towards the fulfilment of his intention, there can be no reasonable doubt that accused intended to commit rape. Courts should not, therefore, cling to the view that for such offence to be committed the accused must have manifested his last overt act, i.e. the taking out of his penis after unbuttoning his trousers or pants, as some judges would wish to think.

6.39 And even if we were to go by the test as laid down in the case of ADAMU MULIRA, above cited, which appears to have provided the guiding principle in the three cases under discussion, we submit that such test was met in the three cases. That test was the finding by the court that the accused had an intention to have sexual intercourse at all costs notwithstanding any resistance on the part of the woman, including an attempt to put this intention into effect. For in both cases all accused persons demonstrated that they were bent to achieve their

objective by doing all what they could up to the point where their actions were interrupted against their wishes either by other people who turned up for the rescue of the complainant woman upon her alarm or following the efforts of both the victim and the rescuers.. And their overt acts mentioned above were attempts to put their intentions into effect.

6.40 Furthermore, to treat such acts of accused persons as mere preparation, and not amounting to an attempt in the circumstances of the cases, clearly overlooked the provision of the law, which states that(40):

“It is immaterial except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from further prosecution of his intention.”

(Underscoring Supplied)

6.41 It follows therefore that the decisions in the three cases did not attempt to strike a balance in the interests of justice to help contain this menace to social security of women in accordance with the letter and spirit of the law, but unfairly weighed more in favour of accused persons by looking at the case law only. Such attitude of courts greatly contributes to the

in-security of women with great adverse effect on their dignity, integrity and liberty. This therefore needs to be arrested, if our women are fully to enjoy their rights to personal dignity, integrity and liberty in this country.

7.0 The Procedural Aspect:

- 7.1 The practice in Tanzania has been that all sexual assault cases are, without exception, tried in open courts. Undoubtedly that adds trauma to the victim. For the cross-examination that goes with such trials tends to instil a sense of great shame, loss of good reputation, dignity, and integrity on the part of the complainant woman. It is not, therefore, surprising that at times in the course of cross-examination the complainant may turn dumbfounded with her eyes down and in tears, not because she has nothing to say, but because of her feeling as to the shame to herself that the utterance of the information sought would cast on her, and the fact that some facts pertaining to sex are not customarily uttered in public. The effect of this is to render the complainant witness incoherent and therefore unable to instil in the mind of the trial judge or magistrate the impression of an honest and truthful witness, thus seriously affecting the credibility and weight of her evidence before the court.
- 7.2 One modern solution to such state of affairs has been the introduction of a procedure whereby the complainant

woman is allowed to testify under a closed circuit television as is the case with the testimony of children. This however, is only possible in countries with advanced or modern television services. In a country like Tanzania Mainland where television service is not advanced the alternative would have to be to have the testimony of the complainant heard in camera.

7.3 The agony experienced by women victims of sexual assault cases is, perhaps, best demonstrated by the lamentation by Kate Gilmore, an Australian, which is quite representative of the position obtaining in Tanzania Mainland and many other developing countries of which most African states are. She had this to say(41):

“There is no difference between being raped and giving evidence as a key witness, at the trial of your alleged rapist except that this time it happens in front of a crowd... The crowd will mostly be men. While there are now women in the judiciary they are in the minority and if your luck runs true to form your presiding judge will be male. And although there is an increasing number of women in the ranks of the legal profession, women, as defence barristers and women as prosecutors they, too, are in the minority. You will have no choice as to who prosecutes your case, nor will you meet the barrister who will prosecute on your behalf before the day of your offender’s trial.”

..“Unlike you, the accused along with the rest of the crowd is entitled to hear the forensic medical evidence, the description of your genitalia, the markings on your nipples, the colour and size of your bruises on your buttocks, the presence or absence of semen on your legs or mouth, the finding of the internal gynaecological examination...

..Unlike you they can hear about the presence or the absence of loosened pubic hair, of flakes of skin under your finger nails, of sexually transmitted diseases.”

- 7.4 That then clearly demonstrates how gravely tormenting the moment must be when a woman victim of rape is called up-on to testify about such incident in an open court. She thus finds herself in a very inhibiting environment for her to tell all about the incident. Justice demands therefore that such state of affairs must be remedied if we are to do justice to our women-folk for the better protection of their dignity, integrity and liberty through our criminal justice system.

8.0 The Compensation Aspect:

- 8.1 The power of courts in Tanzania Mainland to order an accused person to pay compensation to the victim of crime has been in our books for a long time. Generally that is now

provided for under S. 348 of our Criminal Procedure Act, 1985. It is there provided as follows:

“S. 348- (1) When an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by the person by civil suit, such court may, in its discretion and in addition to any other lawful punishment order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable.

(2).....not applicable

(3)..... not applicable.”

(Underscore supplied)

8.2 As will have been noted, the compensation awardable is for material loss or personal injury. It is also to be noted here that whether or not to order such compensation against the convicted accused person in favour of the victim of the criminal

act, remains a discretion of the trial court. Thus failure to make such order is neither appealable nor subject of a revision by a higher court.

8.3 The result is that in most cases courts in this country have overlooked the need to apply the law to have victims of sexual assaults awarded compensation against their assailants. This may be due to want of appreciation that by dint of such crimes the victims have been subjected to serious mental and emotional suffering, though they are often found to have not sustained serious physical injuries.

8.4 It is, however, to be noted that in terms of the Annex to UN's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power(42), Item (1), on Victims of Crime, it is there provided as follows:

“1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States including those proscribing criminal abuse of power.”

8.5 It follows, therefore, that victims of sexual assaults, should always be considered by the courts for the award of

compensation for their mental injury and emotional suffering, notwithstanding that no serious physical injury has been sustained. That will not only serve as consolation to the victim but also an aspect of deterrence to the potential perpetrators of such sexual assaults.

8.6 One way by which our government and Parliament demonstrated how seriously concerned they were with offences that are now scheduled, that is, for which a minimum sentence has been provided, was to require courts to order for mandatory compensation. It is thus provided under Section 7 of the Minimum Sentence Act, 1972 as follows:

“S. 7 - (1) Notwithstanding the provisions of S. 176 (now S.348) of the Criminal Procedure Code (now Criminal Procedure Act, 1985) where a Court convicts any person of a scheduled offence other than an offence under the Prevention of Corruption Act, 1971, the court shall, if it is of the opinion that such person has obtained any property as a result of the commission of the offence and that the owner of the property can be identified, make an order that the person convicted shall pay to the owner of the property compensation equal to the value of the property as assessed by the court.

(2) An order under this section may be made at any

time after the sentence has been passed, and where it has not been made immediately after the sentence has been passed the court which passed the sentence or any court having revisional jurisdiction over it may make such order at any subsequent time on the application of the owner of the property or on its own motion.”

- 8.7 It is submitted that to similarly demonstrate the serious concern over sexual assaults on women, our government and Parliament could as well make an order of compensation in all sexual offences, mandatory, and not to be left to the discretion of courts. This would, in fact, apart from serving as a punitive deterrent measure to the perpetrators of such crimes, would also save the victim of such crimes from the inconvenience, as well as cumbersome and expensive process of a civil suit. This conforms with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which in item 5 of the Annex to the Declaration, states:

“Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”

CHAPTER IV

1.0 RESEARCH FINDINGS:

1.1 Method of Work:

1. Examination of Records on Criminal Returns in the High Court Centres with a view to sorting out relevant cases from 1990 - 1996.

2. To meet and discuss with various groups especially Women Economic Groups/Associations.

1.2 To date Research on Domestic Violence and Sexual Offences against Women has been carried out in the following High Court Zonal Centres:

2.0 TANGA HIGH COURT ZONAL CENTRE/AS WELL AS THE RESIDENT MAGISTRATE AND DISTRICT COURTS

2.1 **RAPE**: 24 cases were filed between 1990 and 1994 and were dealt with as follows:-

Number of rape cases filed	=	24
Number of rape cases withdrawn	=	9
Number of rape cases where accused were acquitted	=	4
Number of rape cases transferred	=	1
Number of rape cases where accused were found guilty	=	8
Number of rape cases not finalized	=	2
		24

Number of accused, convicted and imprisoned were 8. The

sentences ranged between 1 year to 20 years. It would appear that the culprits were mostly 16 - 43 years of age.

2.2 **ATTEMPTED RAPE**: In the same Tanga High Court Centre, there were two attempted rape cases filed. In one case the accused aged 21 was discharged under section 98(a) of the CPA, and in the other case the accused who was 19 years of age was found guilty and sentenced to ten months (10)

imprisonment.

- 2.3 **INDECENT ASSAULT:** In all the Districts in the Region there were 10 cases of indecent assaults; out of these, 5 cases were withdrawn and 4 cases were tried 3 won a conviction while one case won an acquittal. One case was not finalized. Sentences ranged from Tshs. 5,000/= fine, 10 - 20 strokes and ten years imprisonment for a man who was 50 years of age. Most of offenders were from 15 years - 32 years of age except one who was 50 years old.
- 2.4 **DEFILEMENT:** There were a total of 16 cases dealt with in Court. 6 cases were withdrawn, 7 cases ended with conviction of the accused persons, 2 cases resulted in acquittal while one case was still pending in Court. Sentences imposed ranged from 8 strokes to imprisonment for 20 years plus a fine of 10.000/=. The accused persons were of the age of 15 to 30 years except 2 who were 49 years old. The Research however did not show the particulars of the victims/complainants.
- 2.5 **ABDUCTION:** There were three cases of abduction which were all withdrawn. Accused persons' age ranged between 20 and 24 years. The Research is silent on the reasons for the withdrawal as well as the particulars of the victims/complainants.
- 2.6 **KIDNAPPING:** There was only one case of kidnapping which was withdrawn and the Research did not reveal the reasons for

the withdrawal. No particulars of the victim/complainant were recorded.

2.7 ATTEMPTED RAPE: Two cases were filed: one case obtained a conviction whereat the accused aged 19 years was sentenced to 10 months imprisonment. In the other case the accused aged 21 years was discharged under section 98(a) of the Criminal Procedure Act, No. 9/85.

2.8 INDECENT ASSAULT: Ten cases were recorded out of which five cases were withdrawn, 3 obtained a conviction; in one case the accused was acquitted, and the remaining case was not finalized at the material time. Sentences imposed range from 5,000/= fine, 20 strokes and 10 years imprisonment for an accused person aged 50 years. The other offenders were between 15 - 32 years old. Particulars of the victims were not recorded nor the reasons for withdrawal.

2.9 WOMEN ECONOMIC GROUPS: Four Women Groups with a total membership of 61 were visited and interviewed.

From the interview the following information was obtained:

- (a) Seven women confirmed not to have been beaten.
- (b) Some women confirmed the existence of domestic violence caused by various reasons, such as irresponsible attitudes to family matters by husbands, adultery, etc.

- (c) Others reported to be happily married and advocated for spouses to live in harmony. However, there was an exceptional incident of a woman battering and injuring her husband because he had committed adultery. The husband is reported not to have taken the matter to the Police.
- (d) The Ages of the Women ranged between 25 - 55 years.

3.0 ARUSHA HIGH COURT CENTRE

- 3.1 At the High Court Centre in Arusha the Returns from Resident Magistrates and District Courts of Arusha, Mbulu, Babati, Arumeru, Ngorongoro and Hanang were examined but the researcher's report is missing as it was reported stolen together with her car.

4.0 KILIMANJARO REGION

- 4.1 **RAPE**: There were 27 cases of rape filed in court, 11 cases were withdrawn, 9 obtained conviction; there were 2 acquittals, while 5 cases were still pending in Court. Sentences meted out ranged between 3 to 5 years imprisonment although the maximum sentence is life imprisonment with or without corporal punishment. The ages of the accused persons were between 18 - 38 years. Nothing was recorded on the following:
 - Reasons for withdrawal
 - Particulars of the victims.

4.2 ATTEMPTED RAPE: Only one case of attempted rape was recorded. It was however withdrawn. No particulars of the victim and reasons for withdrawal were recorded.

4.3 INDECENT ASSAULT: There were four cases of indecent assault out of which three were withdrawn and the remaining obtained an acquittal. Neither were the reasons for the withdrawal nor the particulars of the victims given.

4.4 DEFILEMENT: 17 cases of defilement were recorded, out of which 9 were withdrawn. Six obtained conviction with sentences ranging from 6 strokes to 15 years of imprisonment. There were 2 acquittals. The ages of the accused ranged between 14 years - 33 years. No particulars of the victims were given and also the reasons for the withdrawal.

4.5 ABDUCTION: There were three cases of abduction two of which were withdrawn. The remaining obtained an acquittal. No particulars of the victims and reasons for withdrawal were given.

5.0 DAR ES SALAAM HIGH COURT CENTRE:

5.1 Research revealed that sexual abuse related offences are on the increase and that the rate of defilement and unnatural offences is alarmingly high. The victims are mostly teenage girls, while the culprits are mostly of the same age. Research has further shown that generally most of the cases are

withdrawn by the Prosecution (Police) under Sections 222, 225(5) and 98 of the Criminal Procedure Act No. 9 of 1985. The common reason for such withdrawal and dismissal of the cases is non appearance of the victims or key witnesses. Invariably cases are withdrawn due to prayers from the victims or their representatives on grounds that there has been reconciliation between the parties hence no need for the case to proceed in court.

5.2 RAPE: There were 24 cases of rape, 9 out of which were withdrawn; 4 obtained acquittal; 8 obtained conviction; 2 were pending while one was transferred to another court. Sentences meted out ranged between 1 - 20 years and the culprits were of the age of 16 - 43 years.

6.0 DAR ES SALAAM REGION

6.1 RAPE:

6.1.1 RESIDENT MAGISTRATES COURT - KISUTU:

There were 17 cases of Rape filed. 2 cases obtained conviction; 2 acquittal while 13 are still pending. Ages of the accused range between 17 - 46 years while sentences meted out were 4 and 5 years imprisonment.

6.1.2 RESIDENT MAGISTRATES COURT - KIVUKONI:

There were 31 cases of Rape filed; out of which 7 obtained conviction; 9 acquittal while 15 are still pending. The

sentences meted out were between 10 - 12 strokes - 5 years imprisonment and a fine of 10.000/=.

6.2 ATTEMPTED RAPE:

6.2.1 KISUTU RESIDENT MAGISTRATES COURT:

Four Cases of attempted rape were recorded, out of which 2 obtained conviction, one acquittal while the remaining one was till pending in court. No particulars of the culprits and the victims were recorded.

6.3 DEFILEMENT: There were a total of 92 cases of defilement, out of which 29 obtained conviction 47 acquittal and 36 cases were pending. Sentences imposed ranged from 1 month - 20 years of imprisonment and 5 - 12 strokes. Ages of the culprits ranged from 14 - 56 years. No particulars of the victims were recorded.

6.4 INDECENT ASSAULT: Only one case of indecent assault was filed and was still pending in court at the material time.

6.5 ABDUCTION: There were sixteen cases, out of which only one case had been tried leading to a conviction. A sentence of one year term of imprisonment was imposed. 5 cases earned an acquittal while 10 cases were pending. The suspects were between 16 - 39 years old.

6.6 UNNATURAL OFFENCES - Section 154 of the Penal Code

There were 42 cases involving offences on unnatural offences. 4 cases earned an acquittal while 8 cases obtained a conviction. 30 cases were still pending at the time of the research. The research made no mention of the sentences imposed, while the ages of the accused ranged between 14 - 70 years.

6.7 INCEST - Section 158 of the Penal Code

There was only one case of incest by male pending in Court at the time of the Research. No details/particulars of both the accused and the victim were recorded.

7.0 MOROGORO REGION

7.1 RAPE: Twenty cases of rape were recorded with no explanatory details.

7.2 INDECENT ASSAULT: Five cases of indecent assault were recorded. All the cases were either dismissed under Section 222 or Section 98 of the Criminal Procedure Act, 1985.

7.3 DEFILEMENT: There were 32 cases recorded out which 14 cases obtained conviction, 6 acquittals and 12 cases were still pending at the time of the research. The sentences meted out ranged from 12 strokes, 2 - 20 years imprisonment. The accused persons were between the ages of 16 and 60 years.

7.4 ABDUCTION: Nine (9) cases of abduction were recorded to have been filed. One case obtained an acquittal while two cases obtained conviction. Six cases were pending at the time of the research. Sentences meted out ranged from 1 - 20 years imprisonment and the accused persons were between the ages of 16 -and 58 years. No particulars of the victims were given.

7.5 UNNATURAL OFFENCES - Section 154 of the Penal Code
There were 19 cases recorded, out of which 8 won convictions, 2 acquittals and 9 were pending at the time of the research. Ages of the accused persons ranged between 10 and 38 years, the majority being teenagers from 10 - 25 years. No particulars of the victims were recorded. The sentences meted out were:

- (i) Conditional discharge of 6 months to two youths aged 10 and 15 years.
- (ii) 12 strokes to a youth aged 15 years.
- (iii) 5 years imprisonment to an accused aged 36 years.
- (iv) 4 years imprisonment to an accused aged 33 years.

7.6 INCEST BY MALE - Section 158 of the Penal Code
One case on incest by male was recorded. The culprit was 39 years old. The case, Criminal Case No. 24/92, was still pending at the time of the research in June 1995.

8.0 MTWARA HIGH COURT CENTRE

8.1 The Mtwara High Court Centre caters for Mtwara, Lindi

and Ruvuma Regions. The research conducted shows that sexual offences e.g. Rape and Defilement are a common phenomenon in the area, hence the people do not bother to report the matter to the Police or any other authority. However, for those cases which are finally reported to the police, they are reported very late and evidence is difficult to assemble. Further, reports are made for the purpose of obtaining PF.3s for hospital purposes. In addition research has established that victims do not report these incidents because of:-

- fear of stigmatizing themselves and their families and clans;
- fear of revenge by the culprits at the conclusion of the trial.

8.2 It should be noted that in Mtwara Region the research shows that most of the cases on sexual violence are not filed in courts for several reasons including:-

- Late reporting of the offences and disappearance of the victims, thus making it difficult to obtain sufficient evidence for prosecution.
- Reconciliation between the parties.
- Problem of identification of the suspects for most of such offences take place at night.

- Corruption and lack of seriousness on the part of the Police.

8.3 Three women groups were interviewed in Mtwara Region, while Lindi Region was not visited due to transport and time constraints.

8.4 **RAPE**: There were 98 cases recorded and only 4 cases were dealt with conclusively although no specific details were given.

8.5 **DEFILEMENT**: 34 cases were recorded out of which only 6 were dealt with. No other details were given.

8.6 **INDECENT ASSAULT**: There were 80 cases recorded, out of which only 4 cases have been dealt with, with no specific details.

9.0 **LINDI DISTRICT COURT**

9.1 **RAPE**: There were 4 cases, out of which 3 obtained conviction while the remaining case was pending in Court. The sentences meted out were 2 years and 12 strokes, 5 years and 10 strokes, 5 years and 12 strokes. The ages of the accused persons were between 20 and 28 years.

9.2 **DEFILEMENT**: There were 5 cases recorded, out of which 4

earned a conviction and the remaining one involving an accused aged 76 years, was withdrawn under Section 98 of the Criminal Procedure Act, 1985. The sentences meted out ranged between 6 and 30 years with 12 strokes. One of the accused convicted, who was aged 60 years, was sentenced to 6 years imprisonment together with 12 strokes.

9.3 INDECENT ASSAULT: There were two cases recorded out of which one accused was convicted and sentenced to 3 years imprisonment, while the other case was withdrawn under Section 98 of the Criminal Procedure Act. Ages of the accused were not stated and no particulars of the victims were recorded.

10.0 LIWALE DISTRICT COURT

10.1 RAPE: There were two cases recorded and both cases earned a conviction. The accused were sentenced to five years imprisonment each. Their ages were not stated nor the particulars of the victims.

10.2 DEFILEMENT: Only one case was recorded and the same was withdrawn under Section 98 of the Criminal Procedure Act. No particulars of both the accused and the victim were recorded.

11.0 NACHINGWEA DISTRICT COURT

11.1 RAPE: Three cases were recorded out of which two were withdrawn. The remaining case earned a conviction with a

four years sentence of imprisonment. The accused was eighteen years old and no particulars of the victims were given.

11.2 DEFILEMENT: There were five cases recorded and all ended up with a conviction. Sentences meted out were 20 years, 8 years imprisonment and 8 strokes. Ages of the accused ranged between 21 and 28 years.

11.3 INDECENT ASSAULT: Only two cases were recorded and in both cases the accused were convicted and sentenced to 2 and 3 years imprisonment. Ages of the accused persons were not stated nor the particulars of the victims.

12.0 NEWALA DISTRICT COURT

12.1 RAPE: There were only two cases recorded, out of which one was withdrawn under Section 98 of the Criminal Procedure Act and the other earned a conviction. The accused was sentenced to five years imprisonment. No details on the victims were recorded.

12.2 DEFILEMENT: There were two cases involving four accused recorded but no further details on the outcome of the cases.

13.0 MASASI DISTRICT COURT

13.1 RAPE: There were 8 cases out of which four cases were withdrawn under Section 98 of the Criminal Procedure Act; two

cases were discharged under Section 225(5) of the Criminal Procedure Act. The remaining two cases earned a conviction whereat the sentences meted out were a fine of 5.000/= in one case and five years imprisonment. The accused were aged between 21 and 29 years.

13.2 ATTEMPTED RAPE: There were two cases of attempted rape recorded out of which one case earned a conviction and a sentence of 10 months imprisonment. The accused was 18 years old. The other case was still pending at the material time.

13.3 DEFILEMENT: There were 12 cases recorded out of which 11 cases ended with a conviction. The sentences meted out ranged between 18 months to 20 years imprisonment. The ages of the accused were between 17 and 35 years. The remaining case was withdrawn under Section 98 of the Criminal Procedure Act.

13.4 INDECENT ASSAULT: There were 12 cases recorded out of which six cases earned conviction. One case was withdrawn and two cases were discharged under ss. 98 and 225(5) of the Criminal Procedure Act respectively, while one case was still pending. The Sentences meted out were five years imprisonment and 9 months. No particulars of the victims were recorded.

13.5 ABDUCTION: There were three cases recorded out of which one earned a conviction and the accused was sentenced to

pay a fine of Shs.3.000/= or 6 months imprisonment. The other two cases were dealt with under Sections 225(5) and 98 of the Criminal Procedure Act respectively. Neither the age of the accused nor the particulars of the victims were recorded.

14.0 TABORA HIGH COURT CENTRE:

14.1 This Centre covers Tabora, Shinyanga and Kigoma

Regions. The research carried out indicates that discussions with Women Groups in Tabora and Kigoma Regions were conducted on domestic violence and sexual offences.

15.0 ABORA REGION

15.1 RAPE: There were 12 cases of rape recorded without specific details.

15.2 ABDUCTION: There were 7 convictions out of the 12 cases of rape with sentences ranging from 6 strokes to 20 years of imprisonment. The ages of the accused persons were between 15 and 37 years. Three cases earned an acquittal while one case was pending at the time of the research.

15.3 DEFILEMENT: There were 13 cases of Defilement recorded, out of which 9 cases obtained a conviction; two cases were withdrawn under Section 98(a) of the Criminal Procedure Act, while two cases earned an acquittal. The sentences meted out ranged from 6 strokes to 20 years imprisonment. The ages of the

accused were between 15 and 50 years.

15.4 INDECENT ASSAULT: One case on indecent assault was recorded whereat the accused was acquitted.

15.5 ABDUCTION: Three cases on abduction were recorded out of which one case was dealt with under section 98(a) of the Criminal Procedure Act, one case earned an acquittal and the third one was still pending. The ages of the accused were not recorded, so was the case with the particulars of the victims.

16.0 KIGOMA REGION

16.1 RAPE: There were 36 cases on rape recorded out of which 8 earned convictions whereat sentences meted out ranged between 15 strokes, 1 - 15 years imprisonment. Sixteen cases were withdrawn either under Section 98 and/or Section 225 of the Criminal Procedure Act. Six cases were tried and ended in acquittal while one case was pending at the time of the research.

16.2 ATTEMPTED RAPE: There were five cases of attempted rape recorded, out of which three were withdrawn and one obtained an acquittal. The remaining case earned a conviction with a sentence of 2 years imprisonment. The age of the accused was recorded as 27 years. No particulars of the other accused were recorded. Equally the victims' particulars were not recorded.

16.3 DEFILEMENT: There were 14 cases of defilement recorded, out of which 6 ended up with convictions. Five cases were withdrawn, two cases ended up with an acquittal while the thirteenth case was still pending. The ages of the accused persons ranged from 13 - 64 years. The accused aged 64 years was sentenced to 20 years imprisonment

16.4 INDECENT ASSAULT: There were only two cases on indecent assault recorded, out of which one case ended up with a conviction while the other was withdrawn.

16.5 UNNATURAL OFFENCES: There were five cases on unnatural offences recorded, out of which 2 were withdrawn, while the remaining three cases ended up with conviction. Notably one among the three convicted accused persons was aged 13 years.

16.6 KIDNAPPING: There was only one case of kidnapping recorded and the accused was acquitted at the trial.

16.7 ABDUCTION: There were only two cases on abduction recorded and all of them were withdrawn. No reason has been recorded for the withdrawal.

17.0 REPORTS FROM SELECTED PRIMARY COURTS

17.1 A second tier research was conducted to cover records in the Primary Courts in selected places in the country. From the available information it is apparent that domestic violence is rampant in our community both in urban and rural areas.

17.2 Findings from the records in the Primary Courts indicate that the prevalent cases on domestic violence are on battery and or assault. However, the majority of cases filed are either withdrawn or dismissed by the Courts on the following reasons;

- fear for breakdown of marriages, family ties once the husbands are imprisoned;
- fear for revenge by the husband's family/relatives;
- lack and little confidence on the part of the complainants to lead evidence in public;
- social stigma on their character and standing in the community;
- lack of evidence, medical or otherwise.

17.3.0 Further data collected show the following offences were tried by Primary Courts:

17.3.1 ABDUCTION: A total of 10 cases were recorded to have been filed in the Primary Courts. Out of these cases only two obtained

conviction. In one case involving a youth of 19 years, a sentence for conditional discharge was given. In the other case the convicted culprit was sentenced to six months imprisonment. Four cases were withdrawn/dismitted under sections 24, 22(1) and 31 of Third Schedule of Act 2/1984 (PCCPC).

17.3.2 INDECENT ASSAULT: A total of 40 cases on indecent assault were recorded out of which 10 cases ended up with a conviction. Sentences meted out were; 11 months imprisonment, 12 months and a fine of 5,000/= or six months imprisonment. The remaining cases were withdrawn.

17.3.3 ASSAULTS: A total of 292 cases on assaults on women by men were recorded in the Urban Primary Courts in Mwanza, Mara and Kagera Regions. Records show that the majority of the cases were withdrawn, while the few cases which ended up with conviction, the sentences meted out were: four strokes together with compensation of 3,000/=; fines ranging between 2,000/= - 1,000/=; imprisonment of 6 - 12 months.

17.3.4 ABUSIVE LANGUAGE: Research revealed that the incidence of using abusive language against women in Mara, Mwanza and Kagera regions is rampant. There were 40 cases on the use of abusive language. Out of these 40 cases only 3 cases ended up with conviction with sentences of 4 months and 6 months imprisonment. The rest of the cases were withdrawn under

Sections 24 and 32 of the 3rd Schedule of Act No. 2/1984.

18.0 MBEYA HIGH COURT ZONAL CENTRE

18.1 The Mbeya High Court Zonal Centre caters for Mbeya, Iringa and Rukwa Regions.

19.0 MBEYA REGION:

19.1 At the High Court Zonal Centre in Mbeya the Criminal Returns from Resident Magistrate and District Courts of Mbeya, Chunya, Ileje, Kyela, Mbozi and Tukuyu Districts were examined. From the records only the offences of rape, attempted rape, defilement, attempted defilement, abduction and indecent assault were reported.

19.2 RAPE: There were a total of 94 rape cases in record in the Courts of Mbeya Region, out of which 42 obtained conviction and 15 acquittals. 31 cases were withdrawn, 4 discharged under Section 225(5) of the Criminal Procedure Act, 1985, while 2 were pending in Court. The ages of the accused ranged from 13 to 58 years. The sentences meted out were of between 6 and 12 strokes, conditional discharge, fines from Shs.2,000/= to shs. 8,000/=, and imprisonment terms of between 2 and 5 years. In one case however, the accused was convicted in absentia and his sentence reserved until his arraignment. There were no particulars of the victims in record.

19.3 ATTEMPTED RAPE: Courts in Mbeya Region had 3 cases of

attempted rape, all of which were ultimately withdrawn. Only the age of one accused person was given to be 34 years. The particulars of the victims were not given.

19.4 DEFILEMENT: There were 42 cases of defilement out of which 21 obtained conviction and 5 acquittal. While 8 cases were withdrawn, 5 cases were discharged under Section 225(5) of the Criminal Procedure Act, 1985, and the remaining 3 were still pending in Court including one involving a 65 years aged accused. The sentences given by the Court were conditional discharge for an accused aged 15 years, and imprisonment of between 4 months and 20 years for the rest. The ages of the accused ranged between 15 and 70 years. There were no particulars of the victims.

19.5 ATTEMPTED DEFILEMENT: Two cases of attempted defilement were in record and both obtained conviction and sentence of 2 and 20 years imprisonment. The age of one of the accused was given to be 20 years. There were no particulars of the victims.

19.6 ABDUCTION: There were 15 cases of abduction of which only 2 obtained conviction and 6 acquittal. Other 6 cases were withdrawn and the remaining one was discharged under section 225(5) of the Criminal Procedure Act, 1985. The sentences awarded were 6 strokes and a fine of shs.8,000/=. The accused were aged between 14 and 50 years. No particulars of the victims were

recorded.

19.7 INDECENT ASSAULT: There were 22 cases of indecent assault,

10 out of which obtained conviction and 4 acquittal. 6 cases were withdrawn while 2 cases were discharged under Section 225(5) of the Criminal Procedure Act, 1985. The sentences given varied between fines of Shs.10,000/= to Shs.12,000/= and imprisonment terms of 6 months to 20 years. The ages of the accused were between 20 and 60 years. There were no particulars of the victims. The reason given for the acquittal and withdrawal of cases in Courts in Mbeya Region is insufficiency of evidence especially corroboration.

19.8 WOMEN GROUPS: The researcher met a total of 131 women in

groups in Mbeya, Ileje, Kyela, Mbozi and Tukuyu Districts, 116 women out of which were interviewed. They confirmed the prevalence of domestic violence and attributed it to stubborn and quarrel some men who resorted to fighting when questioned by their wives about their conduct of, for example, drunkardness, adultery, spending nights outside the matrimonial home without good cause, not providing the family with financial or material support, selling all the farm produce and pocketing all the proceeds without consulting the wife, or providing for the welfare of the family.

19.9 The women condemned specifically drunkard men whom they blamed for battering their wives sometimes on flimsy or no

reasonable grounds at all, like when a wife is late to open a door to the husband who returns home drunk in the early hours of the morning. They stated that such conduct was the cause of disharmony and breakdown of many families.

20.0 IRINGA REGION:

20.1 Examination of Criminal Returns in the Mbeya High Court Zonal Centre from Resident Magistrates and District Courts in the Districts of Iringa, Ludewa, Mufindi and Njombe revealed that only the offences of rape, attempted rape, defilement, abduction and indecent assaults were reported.

20.2 RAPE: Fifty five (55) cases of rape were recorded, out of which 23 obtained conviction and 14 acquittal. At the same time 15 cases were withdrawn and 2 cases discharged under Section 225(5) of the Criminal Procedure Act, 1985. One case was still pending in Court. The sentences meted out ranged between 7 months and 15 years imprisonment. The ages of the accused were between 15 and 40 years. Absent from the records were the particulars of the victims.

20.3 ATTEMPTED RAPE: There was only one case of attempted rape in which the accused was convicted of common assault and fined Shs.5,000/=. No further particulars were recorded in respect of the accused or the victim.

20.4 DEFILEMENT: Thirty four (34) cases of defilement were in

record 27 out of which received conviction and 1 acquittal. 4 cases were dismissed while 2 were discharged under Section 225(5) of the Criminal Procedure Act, 1985. The sentences meted out varied from 5 to 12 strokes for the accused under 16 years of age, to imprisonment terms of 1 to 20 years for the older accused aged between 16 to 56 years. There was no record of any particulars of the victims.

20.5 ABDUCTION: Only three (3) cases were recorded for abduction out of which 1 received conviction, another was withdrawn and the other one dismissed under Section 22(5) of the Criminal Procedure Act, 1985. The accused were aged 20 and 28 years. The sentence meted out was 20 years imprisonment. There were no particulars of the victims.

20.6 INDECENT ASSAULT: There were only 7 filed cases of indecent assault. Two out of these cases received conviction and 3 acquittal. The remaining two were either withdrawn or dismissed under Section 225(5) of the Criminal Procedure Act, 1985. The returns did not reveal any particulars of the victims. The reasons recorded for the acquittal, withdrawal and dismissal of cases were; lack of sufficient evidence, complainants not interested with the case, credibility of the complainant questioned, lack of corroboration and doubtful identification of the culprit. The researcher noted also that there was very unreasonable analysis of evidence and acceptance of defence cases despite strong evidence to the contrary in some of the cases. No women groups were interviewed in this region because of the short period

assigned for the research.

21.0 RUKWA REGION: The Criminal Returns of Resident Magistrates and District Courts in the Districts of Sumbawanga, Mpanda and Nkasi were scrutinized at the Mbeya High Court Zonal Centre. The record revealed statistics for the offences of rape, defilement, abduction and indecent assault.

21.1 RAPE: Sixteen cases of rape were in record, 8 out of which obtained conviction and 1 acquittal. There were 7 withdrawals. The sentences meted out ranged between 2 to 8 years while the ages of the accused were spread between 15 and 60 years.

21.2 DEFILEMENT: There were in record 6 cases of defilement, 4 out of which obtained conviction and the rest 2 were withdrawn. The sentences meted out ranged between 5 to 20 years imprisonment, the highest term being handed to a 68 years old accused. The ages of the accused varied from 18 to 68 years. No particulars were in record in respect of the victims.

21.3 ABDUCTION: Criminal Returns showed that there were 4 cases of abduction, two out of which obtained acquittal, one was withdrawn and the remaining one dismissed by the Court under Section 225(5) of Criminal Procedure Act, 1985. There was no conviction and therefore no sentences meted out. The ages of the accused were not recorded. Neither were there any particulars of

the victims.

21.4 INDECENT ASSAULTS: Three cases only were on indecent assaults. All the cases were withdrawn. Only the ages of the two accused in one of the cases were recorded to be 15 and 16 years. No particulars were in record in respect of victims. There was no reason in record for the acquittals, withdrawals or failure to avoid dismissal of cases under Section 225(5) of the Criminal Procedure Act, 1985. No interviews of women groups were conducted in this region because of time, financial and transport constraints.

CHAPTER V

1.0 WHAT IS TO BE DONE:

- 1.1 In the above discussion we have endeavoured to show how the provisions of the criminal law in Tanzania Mainland, though intended to protect the dignity, integrity and liberty of our

women-folk, by providing, heavy penalties for such offences as rape, attempted rape and allied offences, have not been effectively applied to achieve such objective. We have shown that such failure has been the result of a number of factors. These factors are; one, the low sentences imposed by subordinate courts on the convicts, partly due to lack of appreciation of the gravity and nature of the offence; two, the strict application of the requirement of corroboration of the evidence of the complainant woman where she turns out to be the only eye witness; three, lack of due regard to and assessment of the credibility of her evidence as is the case in respect of other offences.

1.2 Additional factors are:

- (1) the tendency of the courts to construe acts done towards the commission of rape, very restrictively, based on the case-law “proximate and last act” doctrine, contrary to the clear provision of our Penal Code which defines acts which constitute an attempt;
- (2) the failure of the courts to award compensation in most cases where one is convicted of a sexual assault;
- (3) the problem of requiring the victim of a sexual offence to testify in an open court, a factor which

tends to inhibit her from telling all that she knows and is relevant to the case, on account of her reluctance to divulge certain information in public which she considers derogatory to her dignity, integrity and respect.

1.3 The following, therefore, are what we consider, upon reform, could greatly improve or enhance the effectiveness of our criminal law as a vehicle for the protection of the personal integrity, dignity and liberty of women in Tanzania by at least reducing to the minimum, incidences of rape, attempted rape, indecent assault, defilement of girls under 14 years and allied offences, committed against them by some male members of our society.

2.0 SENTENCING:

2.1 The sentences often imposed upon the perpetrators of sexual assault offences, such as rape, are not at all commensurate with the gravity of the offences. Measures that could remedy such a situation are two-fold:

- (i) To retain the jurisdiction of subordinate courts, but provide for a minimum sentence in respect of all sexual offences, except indecent assault, as is the case with offences of defilement of young girls.
- (ii) The power of the High Court when exercising its

revisional jurisdiction to enhance a sentence imposed by a subordinate court should not be limited to the extent of the sentencing powers of the subordinate court as is now the case under the Criminal Procedure Act, 1985(43). This should be left to the discretion and judgement of the court, limited only by the maximum penalty that could be imposed for the offence under the relevant provision of the law, in the same way as it does when the court exercises its appellate jurisdiction, as provided for under the Criminal Procedure Act, 1985(44);

3.0 REQUIREMENT OF CORROBORATION:

3.1 In this case, as has been the case with children of tender years(45), the law of evidence could specifically take away such requirement as strictly demanded by the courts, by providing that the mere fact that the evidence of the victim has not been corroborated by any other independent witness shall not entitle the accused person to be acquitted, but require courts to assess the credibility of the evidence of the victim as a lone witness, on its own merit, as they do in respect of other offences.

3.2 It is true that in the case of *ABASI S/O RAMADHANI v.R.* cited above, Biron, J., as he then was, appears to have moved closer to what, in fact, ought to have been the stand of the courts in this country. That however, may not be the immediate solution because his judgement is not binding upon other judges of the High Court. All what he has succeeded to do is to create another school of thought as to how to deal with such requirement of corroboration in sexual offences. To date, the Tanzania Court of

Appeal is not on record to have pronounced itself on could be conflicting decisions/judgements of the High Court.

3.3 Furthermore, modern technology and science should be called into play to enrich forensic medicine such as the DNA methods, which could be of great help in identifying criminals with certainty.

3.4 Further that, under Section 2(2) of the Judicature and Application of Laws Ordinance(46), it is provided as follows:

“Subject to the provisions of the Ordinance, the jurisdiction of the High Court shall be exercised in conformity with written laws which are in force in Tanganyika on the date on which this Ordinance comes into operation (including the laws applied by this Ordinance) or which may hereafter be applied or enacted and subject thereto and so far as the same shall not extend, or apply shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the twenty-second day of July 1920, and with the powers vested in and according to procedure and practice observed by and before courts of Justice and justices of the Peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may at any time before the

date on which this ordinance comes into operation have been modified, amended or replaced by other provision in lieu thereof, by or under the authority of any Order of Her Majesty in Council, or by any Proclamation issued or any Ordinance or Ordinances passed in and for Tanganyika, or may hereafter be modified amended or replaced by other provision in lieu thereof by or under any such Ordinance or any Act, or Acts of the Parliament of Tanganyika:

Provided always that the said common law, doctrines of equity and statutes of general application shall be in force in Tanganyika only so far as the circumstances of Tanganyika and its inhabitants permit and subject to such qualifications as local circumstances may render necessary.

(Underscoring supplied)

3.5 From the above provision it is evident that in dispensing justice in this country the High Court is, first and foremost, to apply written laws of the land. It is only in the absence of such written laws applicable to any given subject matter or situation, that the court will be entitled to resort to and apply the substance of the common law, doctrines of equity and statutes of general application in force in England on the twenty-second day of July 1920. And even then, the application of such English Laws, principles and doctrines, may be applied only so far as the circumstances of our country and its inhabitants permit, and

the same may be so applied with qualifications as local circumstances may render necessary.

3.6 It is not a wholesale transplant of such laws and doctrines in total disregard of the written laws of the country and the prevailing local circumstances: e.g. the social relations and culture of our people. These have to be known and born in mind by our courts and the legislature.

4.0 THE PROCEDURAL ASPECT:

4.1 As pointed out earlier, the current procedural requirement that a witness should testify in an open court is very inhibitive and has the adverse effect of impairing credibility of complainants as witnesses in sexual offences. There is therefore a great need to change this practice, by providing that such cases be held in camera. With such privacy women complainants in sexual offences will be able to freely and openly speak their minds as witnesses. With the introduction of television services this could be done by way of a closed circuit.

5.0 THE COMPENSATION ASPECT:

5.1 In order to ensure that every victim of sexual offence is awarded compensation by her convicted assailant, the Criminal Procedure Act 1985 would have to be amended to make such an order mandatory, in the same way as it has been done for offences falling under the Minimum Sentence Act, 1972. That would go a long way in

implementing the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A minimum amount of such compensation could be laid down by law: the younger the victim the higher such amount should be.

6.0 SPECIALISED ASSISTANCE:

6.1 Measures should be adopted to ensure that women subjected to violence, and where appropriate, their children, should have specialised assistance such as rehabilitation assistance in child care, maintenance, treatment and counselling.

6.2 The non governmental organizations such as Legal Aid from the Faculty of Law of Dar es Salaam and the Tanganyika Law Society, Tanzania Women Lawyers Association, Committee on Violence against Women under TAMWA, have been established to see to it that women subjected to violence have access to assistance such as rehabilitation and counselling. They should be encouraged and assisted to work out elaborate and effective programs in this regard.

6.3 Furthermore, there are a number of pressure groups like the Medical Women's Association and UMATI which were established to ensure, where appropriate, children of women subjected to violence have specialised assistance, such as assistance in child care and maintenance, counselling and

treatment. These too should be encouraged and assisted to formulate suitable/viable programmes

7.0 EDUCATION AND TRAINING:

7.1 Public education and training programmes should be undertaken to create awareness of causes, effects and measures to combat violence against women.

7.2 Seminars and workshops which most of the time are conducted to create awareness of causes, effects and measures to combat violence against women should further be used to train trainers. These seminars and workshops are meant for mass media heads and other participants from various institutions, NGOs pressure groups, etc. with an intention to utilize those who attended the seminars/workshops to disseminate the information, training provided in these seminars/workshops to other people where they come from e.g. institutions, groups association, etc. in order for them to transmit the knowledge, information, training to the targeted group of people within the country.

CHAPTER VI

1.0 CONCLUSION

1.1 One of the topical issues today, not only in Africa and Tanzania Mainland, in particular, but also the world over, is the outcry for the enhancement of the status of women. This entails the creation of an environment whereby women could fully enjoy human rights on equal footing with men in their respective societies. Among such rights are the fundamental rights to one's dignity, integrity and liberty.

1.2 The provision of the criminal law measures against, among other things, acts of rape, attempted rape, defilement of young girls, indecent assault, wife battering and allied offences, intended to protect the dignity, integrity and liberty of women, are ever older in point of time than other measures now being undertaken to promote women's status in their respective societies. In these endeavours Tanzania Mainland is well ahead towards the achievement of such international objective.

1.3 As it has been noted, in Tanzania Mainland there is no problem with the substantive provisions of the criminal law. It is the procedural aspect of our law and the judicial application or interpretation of both such substantive and procedural laws that appear to have failed to give effective protection of the dignity, integrity and liberty of women in our country, by way of minimising acts of rape, attempted rape, defilement of young girls, indecent assaults, and allied offences against women. These then are the areas that call for change. It is a change that has to be both legislative and in the attitudes of the members of the Bench, so that inadequate sentences, strict requirement for corroboration of the victims evidence and restrictive construction of acts required to constitute the offence of attempted rape, shall no longer stand as impediments towards effective implementation of the substantive criminal law provisions already discussed.

1.4 It is with the foregoing in mind that on 28/10/92 the Commission decided to undertake this Criminal Law Reform Project with

the end purpose of investigating into and coming out with concrete proposals on measures that would hopefully improve effectiveness in enforcing the provisions of our criminal law for the protection of the rights of women to personal dignity, integrity and liberty.

1.5 Bearing in mind that men lead in carrying out domestic and sexual violence on women and that these acts interfere with the enjoyment of integrity, dignity and liberty of women and that laws enacted to protect women from these violations are quite adequate, save for their administration it is therefore recommended that:

- (i) On sentencing, the following measures must be taken to remedy the problem of imposing inadequate sentences:
 - (a) Subordinate courts should have jurisdiction over those serious offences with the further provision that the law should provide for minimum sentences in respect of each of these serious offence, i.e. rape, attempted rape, defilement of young girls, abduction and kidnapping.
 - (b) Give extended sentencing powers to such subordinate courts and provide maximum prison sentences to be imposed for each of the serious

offences under the relevant proviso of the law.

- (c) The Commission has considered the practice of some HIV/AIDS infected persons who commit sexual related offences in order to spread the disease. This conduct puts the victims in danger of being infected with HIV virus and ultimately end up in death. In order to try to prevent such conduct where a culprit is HIV/AIDS infected Courts should consider that conduct as an aggravating factor in sentencing (Sic. See the uganda case where death penalty is provided)
- (ii) On Requirement of Corroboration, the Law of Evidence specifically should provide that where evidence of the victim has not been corroborated by any other independent witnesses that should not entitle the accused person to be acquitted but require courts to assessthe credibility of the evidence of the victim on its own as a lone witness.
- (iii) The restrictive construction of acts constituting attempted rape should be remedied by appropriate legislations to conform to decided cases which have regard to the spirit of the provisions in the Penal Code.

- (iv) There should be amendment to the Criminal Procedure Act, 1985 to make it mandatory for the courts, to award compensation to the victim of a sexual offence and domestic violence.
- (v) There should be specialized assistance to women subjected to violence and where appropriate, their children. Such assistance could be rehabilitation, child care, counselling and maintenance.
- (vi) There should be Education and Training programmes to create awareness of causes, effects and measures to combat violence against women and to sensitize women and men to observe human rights so as to ensure the protection of women personal integrity, dignity and liberty.

1.6 The application of these recommendations lends support to the National Plan of Action developed to promote protection of women against all forms of violence. (47)

