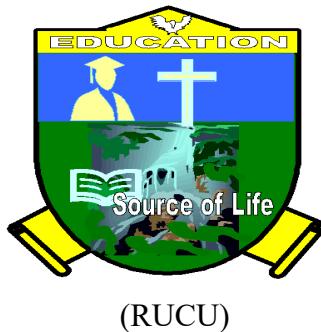


RUAHA CATHOLIC UNIVERSITY



Research Title:

**PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE: A
COMPARATIVE ANALYSIS OF LEGAL REMEDIES IN TANZANIA AND
THE UNITED KINGDOM**

**A Research Paper Submitted In Partial Fulfilment Of The Requirements For
The Award of Degree of Bachelor in Law(LL.B) Ruaha Catholic University**

By

STUDENT'S NAME: MRINDOKO FATMA, S.

REGISRATION NO: 419/LLB/T/2015

PREPARED UNDER THE SUPERVISION OF

Ms. NAOMI GICHUKI

AT THE

FACULTY OF LAW

AUGUST 2019

CERTIFICATION

The undersigned certifies that she has read and hereby recommends for acceptance by the Ruaha Catholic University a research paper entitled: **PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE COMPARATIVE ANALYSIS OF LEGAL REMEDIES IN TANZANIA AND THE UNITED KINGDOM** in partial fulfillment of the requirement for the degree of Bachelor of Law of the Ruaha Catholic University.

.....

Ms. Naomi Gichuki

(Supervisor)

Date.....

DECLARATION

I, Mrindoko Fatma,S, declare that this research paper is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

.....

Mrindoko Fatma, S

(Researcher)

Date

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I wish to express my sincere gratitude to my supervisor, Ms. Naomi Gichuki for her guidance, clear direction and encouragement given so generously throughout the writing of this research paper were invaluable and deeply appreciated.

DEDICATION

I kindly dedicate this work to my parents Mr. and Mrs. Mrindoko, who have loved me and cared for me throughout the process. There is no doubt in my mind that without their continued support and counsel I would not have completed this process, may Allah reward them abundantly for their generosity

ABSTRACT

This study is based on a comparative analysis of remedies on protection of women against domestic violence in Tanzania Law of Marriage Act and United Kingdom. Tanzania and United Kingdom both prohibits Domestic Violence. Despite the fact that the Tanzania Law of Marriage Act prohibits the use of corporal punishment against a spouse under section 66, it does not provide remedies to the victims of domestic violence particular on marital rape. Domestic violence it includes physical violence, sexual violence, psychological abuse, emotional abuse. The Family Law Act of 1996 (as amended 2015) of UK under part IV provides for domestic violence and ways of protecting women against domestic violence. The court can issue injunctions or remedies which are known as occupation order and non-molestation order while in Tanzania non-molestation order is only available where there is a matrimonial proceeding in the court or on or after annulment of marriage, it is not available at any time as in the United Kingdom. The Act provides punishment when the abuser breaches those court orders.

The research recommends Law of Marriage Act should be amended to include the meaning of corporal punishment, ways of protecting women or victims of domestic violence and punishment to those who use corporal punishment to their wives.

LEGAL INSTRUMENTS

International Instruments

United Nations Declaration of Elimination of Violence Against Women adopted in 1993

Universal Declaration of Human Rights adopted in 1948

Convention on Elimination of all Forms Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 December 1979, entry into force on 3 September 1981.

Regional Instrument

African (Banjul) Charter on Human and People's Right (Adopted 27 June 1981, OAU Doc, CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

The Protocol to the African Charter on Human and Peoples Right on the Right of Women in Africa (Adopted by the second Ordinary Session of the Assembly of the Union, Maputo 11 July 2003)

Domestic Instruments

The Constitution of United Republic of Tanzania of 1977 (as amended from time to time)

The Law of Marriage Act, Cap 29, R.E 2002

The Penal code Cap 16, R.E 2002

The Corporal Punishment Act Cap 17, R.E 2002

United Kingdom Law

Family Law Act of 1996 as amended 2015

CASE

Republic V Elvance Cypria Luvindu, High Court of Dar es Salaam, case No.8 of 2003
(unreported)

Republic Versus Patrick s/o of Kiyeyeu, Criminal case No.222 of 2006 in the Resident
Magistrate Court at Iringa, judgment pronounced on 2009

Margarel Neffed of 1395

Martin Mwandege V Chrisensian Simeon, High Court of Mbeya (P.C) Matrimonial Civil
Appeal, case No.16 of 1978

A.T. V Hungary, Communication No.2 of 2003

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ABBREVIATION

WHO	World Health Organization
MKUKUTA	Mkakati wa Kukuza Uchumi na Kupunguza Umashini Tanzania
UK	United Kingdom
TDHS	Tanzania Demographic and Health Survey
GBV	Gender Based Violence
LHRC	Legal and Human Rights Centre
ZLHC	Zanzibar Legal Services Centre
DW	Deutsche Welle
DVAW	Domestic Violence Against Women
JHR	Journalist for Human Rights
UNICEF	United Nations Children's Fund
UN	United Nations
ICRW	International Centre for Research on Women
UNFPA	United Nations Population Fund

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

This research is a discussion of domestic violence based on a comparative analysis of legal remedies available to the victims of domestic violence in Tanzania and United Kingdom and punishment to the perpetrators of domestic violence.

1.1 Background of the problem.

Domestic violence has occurred in homes throughout the world for several decades. Domestic violence is one among the brutal weapons which the large number of women in global world societies faces and it has been approved by the UN Council to be the one among the problem undermining the women and fill like they are discriminated and being treated badly¹.

Domestic violence is the one among the leading reasons for family problems or misunderstanding and in many occasions into separation or totally divorce². Incidents of domestic violence is mostly reported as high in villages than the incidents in towns or urban areas example in communities such as *Wakuria, Maasai, Sukuma, Wagogo, Nyatulu, Mang'ati* and other tribes in Tanzania are being reported to be the most leading

¹Merry, S.E., *Human rights and gender violence, translating international law into local justice*.Chikago and London: The University of Chikago Press2006, 269

²<http://www.Worldbank.org/gender/agency> [Accessed 20/4/2019].

in domestic violence against women such as beating, female genital mutilation, sexual abuse including marital rape and other form of domestic violence³

Domestic or partner violence is a global concern. Worldwide 30% of women with partners will experience physical or sexual violence in their lifetime. Various measures such as legislation, women who are survivor or victim support services, and individual counselling have ameliorated some of the impacts of violence due to impacts of violence the need for effective prevention becomes increasingly urgent.⁴

After independence in 1963 Customary Law Declaration Order⁵ was enacted which contained elements of gender discrimination because husbands were harsh to their wives and the court entertained domestic violence against women cases such as rape. However, the society response has been poor and number of cases of domestic violence increased and later the Constitution⁶ included bill of rights and gender discrimination was prohibited.

One of the earliest reported case in united Kingdom was that of *Margarel Neffed* of 1395, she was attacked by husband who had wielded a dagger, he wounded her and broke her bones despite giving such evidence to the court judicial separation was never given out and she was compelled to live with her husband.⁷

³ Supra note 1

⁴<https://www.theguardian.com/global-development-professionals-network/2014/aug/29/domestic-violence> (accessed on 3rd July 2019)

⁵ The Local Customary Law Declaration, Government Notice No.436 of 1963

⁶ The Constitution of United Republic of Tanzania of 1977 (as amended from time to time)

⁷ L.Smith, Domestic Violence, Crown Copyright, London, 1990,3.

In the latter half of 19th Century, there were pressure to reform laws regarding domestic violence and it was achieved in the Matrimonial Cause Act which was passed in 1878 which have the remedy of domestic violence which was known as separation.⁸

The Dabashes (1981) conducted historical root of domestic violence and explained that husband have used violence against his wife in order to dominate, punish or control the wife and domestic violence was considered as social problem and three important legislations was enacted. The Domestic Violence and Matrimonial Proceedings Act of 1976, The Housing (Homeless Persons) Act of 1977 and The Domestic Violence and Magistrate Court Act of 1978 in order to protect women against domestic Violence

1.2 Statement of Problem

Reports and publications from different authors are printed out in relation of protection of women against domestic violence in society because it is against human right and it is prohibited domestic instrument and international human rights instrument

In Tanzania matters relating to domestic violence are prohibited by section 158(1) of the Penal Code Cap 16, R.E 2002 and under section 66 of the Law of Marriage Act Cap 29, R.E 2002. Lack of a specific law which governs domestic violence against women in Tanzania lead to lack of proper mechanism to deal with the problem.

This research therefore intends to investigate to which the laws provide remedies to women as victims of domestic violence

⁸ *Supra* note 7

1.3 Objectives of the Study

The general objectives of this research is to examine the position of the law on protection of domestic violence against women under section 66 of Tanzania Law of Marriage and Under Part IV of United Kingdom Family Law of 1977 (as amended 2015)

1.3.1 Specific Objective

- (i) To examine domestic violence against women as it is provided under section 66 of the Tanzania Law of Marriage Act.
- (ii) To examine the law relating to the punishment of domestic violence, and the extent to which it helps to deter perpetrators of such violence.
- (iii) To investigate the legal remedies available for victims of domestic violence in Tanzania.

1.4 Significance of the Study

The findings of the study will be used for its aims at critical comparison on the law of Marriage compare to practice under the common law system and hence provides a broad spectrum and practical implementation of wife protection against battery in the country, it is contemplated that the findings of the research will be useful and helpful for wife protection and human right building in the country. This argument is tenable because, the citizen will hopefully be awakened on the awareness of their social and economic rights for the sake of creating a society that adheres to the principles of human rights

1.5 Literature Review.

This part basically entails different literature matter of describing the legal challenge existing to remedies and protecting victims against domestic violence in Tanzania compare to that of Common law. There are various publication and reports from different authors in relation to domestic violence in Tanzania however very few from those works tried to describe about punishment to perpetrators of the domestic violence and encourage the Legislature and enforcement agencies not only to punish the offenders but they should focus on preventing such degrading act in the country. Among such works which relate to the study under consideration are reviewed as follows.

Cretney,⁹ talked about culture as a source of domestic violence in families but the Author did not explain the basis of law regarding domestic violence and also the remedies which law provide if the husbands beats up their wives. This is the same as Tanzania because the Law of Marriage Act is silent about the remedies available to the victims of domestic violence and punishment for those who beat up their wives.

Magoke Mhoja,¹⁰ talked about the patriarchal system which is dominant in the social norms in gender relations that reflects the subordinate status of women under norms where men have much power in their families for example *Maasai* and *Kurya* societies from Tanzania who assault or batter their wives as a way of instilling discipline on their wives. The author is silent as to whether there are any remedies available to the victims

⁹Creney, M. Stephen, Masson M. Judith Harris, Rebecca Bailex, *Principle of family Law*,2005, pg 52

¹⁰MagokeMhoja, Monica Elias, *Child widows silenced and unheard*, Human Rights, Human Rights Suffers in Tanzania,2005,page 5

of domestic violence and how the Law of Marriage Act of Tanzania protects this women against Domestic violence.

Kate Standley,¹¹talks about domestic violence as a form of physical and psychological harassment, the work described types of domestic violence in his book. It also describes criminal remedies of domestic violence but he failed to address civil remedies about domestic violence and how victim of domestic violence should be protected under the Law of Marriage Act in Tanzania and how the husbands who abuse their wives should be punished under the same Act.

Sherbanu Kassim,¹²wrote about domestic violence against women but failed to propose a solution to domestic violence in Tanzania and how the victims of domestic violence should be protected. The work also fails to address the issue of punishment in respect of acts of domestic violence under the Law of Marriage Act.

Blomley,¹³ talked about domestic violence but he failed to show what should be done to protect the victims of domestic violence from the perpetrators and what punishment they can get when they abuse their wives, so this research will cover up this gap which the author failed to show regarding the protection of women rights against domestic violence on their marriages.

¹¹K. Standley, *Family law*,4th Edition,2004,page 103-130

¹² S. Kassim (2006), *Women Research and Documentary project Human Rights and Gender on mainland Tanzania*, a paper presented On 6-8 December 2006, Oasis Hotel Morogoro.

¹³*Family Law*,6th Edition

Galabawa,¹⁴ discussed domestic violence and describes is a serious problem in Tanzania and the whole world and goes further by saying it is a criminal offence and civil wrong but he failed to show how the abuser are punished under the Law of Marriage Act as he said domestic violence is also a civil wrong and the victims are protected against their abusive husbands.

Those writers failed to show the civil remedies available to the beaten up wives against their spouses and also the protection of wives against domestic violence in the Marriages.

Dunn,¹⁵ talked about forms of domestic violence such as physical form, sexual form which include marital rape and stated that Marital rape as one of forms of domestic violence in England, since the Family Law Act govern Married couples then the woman who is victim of domestic violence and apply to the court two types of remedies which are non-molestation and an occupation order against a perpetrator of domestic violence unlike in Tanzania which there is no remedy for marital rape and non-molestation order in Tanzania is provided under section 139 of Law of Marriage Act but is only available when there is a pending matrimonial proceedings in the court or on or after the grant of a decree of annulment unlike in United Kingdom where it is available at any time.

¹⁴ J.C.J, Galabawa (ed), *Paper in Education and development the Norwegian Programme for Development, Research and Education*, Vol. 28, 2008, page 1

¹⁵ V. Dunn, *Family Law in Practice*, 11th Ed., Oxford University Press, England, 2012, 29

Mordecai,¹⁶discussed domestic violence and explained that in England there are different remedies available to the women who are victims of domestic violence, the Family Act in United Kingdom provides for Civil remedies to the victims of domestic violence such as marital rape and women preferred to pursue civil remedy but the author failed to show how perpetrators of domestic are punished under civil wrong of domestic violence.

1.6 Hypothesis

The research is premised on the hypothesis that the Tanzania Law of Marriage Act does not provide adequate remedies for victims of domestic violence compare to United Kingdom Family Law Act.

1.7 Research Methodology

A combination of methods was employed in this study. These included desk review and interview of key informants. The documents reviewed included; international legal instruments indicated in this report, national laws and policies, various reports including those covering domestic violence and Gender based violence in Tanzanian and online materials. The key informant interviews involved Police Officers, women and practicing advocates.

¹⁶ L. Mordecai, *Domestic Violence and its reverberation*, Nova Copyright, England,2006,2.

1.7.1 Library Research

In conducting this research the researcher visited Ruaha Catholic University Library (Mkapa Learning resource center) to explore secondary data. This was the main method of obtaining data particularly from cases and legislation which includes local legislation, regional legislation and international conventions dealing with the protections of women from domestic violence. Secondary data collected includes information from textbooks, journals, unpublished materials, social welfare reports and general reports from non-Government organization. Since independence, different authors have been writing on the issues pertaining to domestic violence and the human rights towards civilized society.

1.7.2 Field Research

The researcher visited different organization including Government agencies such as the Police Gender and Children Desk here being referred as (PGCD) and Courts,.

Interviews were conducted with respondents targeted by the researcher in accordance with their position in office, rank and knowledge qualifications. Face to face interviews were conducted and the questions which were framed were open ended questioners.

Questionnaires

The researcher drafted number of question in writing which were in form of open ended questions and asked to the respondents, the questions were aimed at identifying the general understanding from the respondents in relation to the problem of domestic violence to women and GBV in general, the perception of the community in relation to how the matters of domestic violence are being dealt with in Tanzania. The list of structured question will appear to the fourth chapter of this research.

1.8 Scope and Limitation of the Study.

1.8.1. Scope of the Study

The study is based at Iringa region and the reference was been made to situation in United Kingdom position in relation to DVAW. This study is solely concerned with the challenges especially legal one in relation to DVAW and GBV in general encounters. The basis is at Iringa Municipality mainly because such violations are intense throughout the country and Iringa region as well as its municipality which happens to be among the areas in the country which struggles with these problem of domestic violence

1.8.2. Limitation of the Study

This is to provide the undergoing challenge faced the researcher while conducting and obtaining the information pertaining to the subject matter.

- i. The researcher faced some difficulties in extracting the information, financial problems being one of them since most of the information is to be obtained through internet, which is expensive.
- ii. Another limitation of time due to the reasons that the researcher was conducting her research while attending class activities and lectures
- iii. The lack of corporation from the respondents from PGCD due to the facts that the data and information are kept very confidential and they are under the essential service committee

Way toward the challenges

The researcher communicated with the Dean Faculty for the letter of approval to conduct the field research (the letter of recognition and approval to carry academicals research) to the PGCD and social welfare made member and people responsible to those institutions to show their corporation.

The researcher also informed the respondent about anonymity of their information and data to third parties or to any other person to whom they are not concerned.

CHAPTER TWO

CONCEPTUAL FRAMEWORK IN RELATION TO DOMESTIC VIOLENCE AGAINST WOMEN

2.1. Meaning of Domestic Violence

The United Nations defines domestic violence as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹⁷

Under Article 1 of the United nations Declaration on the Elimination of Violence Against Women of 1993, domestic violence was defined as the "act of gender based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion on or arbitrary deprivation of liberty whether occurring in public or in private life"

Domestic violence is not physical violence alone, domestic violence is any behavior the purpose of which is to gain power and control over a spouse or partner.¹⁸ It refers to a wife as a property of the husband and that he has the right to carry out whatever behavior is necessary to keep her in line.¹⁹

¹⁷United Nations *Declaration on the Elimination of Violence Against Women*, New York : UN, 1993.

¹⁸Cotran, E. *Restatement of African Law of Marriage and Divorce*, Kenya, Vol.11968, pg 165

¹⁹ D. Levinson, *Family Violence in cross cultural perspective*, C.a sage, new burry park 1989, 327.

Domestic violence is a learned behavior; it is not only caused by anger, mental problems, drugs or alcohol or other common excuses.²⁰ Examples of abuse include name calling, keeping a partner from contacting their family or friends, withholding money, stopping a partner from getting or keeping a job, sexual assault, stalking, actual or threatened physical harm and intimidation.²¹

2.2. Forms of domestic violence

Domestic violence can take form in different ways such as follow

Physical violence;

It involves the use of physical force against another. Examples include hitting, shoving, grabbing, biting, restraining, shaking, choking, burning, forcing drug/alcohol use, and assault with a weapon, etc. Physical violence may or may not result in an injury that requires medical attention.²²

Sexual violence

It involves the violation of an individual's bodily integrity (sexual assault), including coercing a person into sexual contact, marital rape, and prostitution, as well as any unwelcome sexual behavior (sexual harassment), and including treating someone in a sexually demeaning manner or any other conduct of a sexual nature, whether physical,

²⁰<https://www.acesdv.org/domestic-violence-graphics> (accessed 16th May 2019)

²¹[http://www.avanfoundation.org/cause/domestic violence](http://www.avanfoundation.org/cause/domestic-violence) (accessed 19th May 2019)

²²<http://www.stopvaw.org/> (accessed 23rd may 2019)

verbal, or non-verbal. Sexual abuse also includes behavior which limits reproductive rights, such as preventing use of contraceptive methods and forcing abortion.²³

Psychological abuse

It is often characterized as including intimidation, threats of harm, and isolation. Examples include instilling fear in an intimate partner through threatening behavior, such as damaging property or controlling what the victim does and who they talk to. Spiritual abuse may be included as a type of psychological abuse. It involves the misuse of spiritual or religious beliefs to manipulate or exert power and control over an intimate partner.²⁴

Emotional abuse

It involves undermining an individual's sense of self-worth. Examples of emotional abuse include constant criticism, name-calling, embarrassing, mocking, humiliating, and treating a woman like a servant.²⁵

Economic abuse

It involves making or attempting to make the victim financially dependent on the abuser. Examples of economic abuse include preventing or forbidding an intimate partner from

²³ *Idem* note 19

²⁴ *Ibid* note 18

²⁵ *Ibid* note 18

working or gaining and education, controlling the financial resources, and withholding access to economic resources.²⁶

2.3. Causes of Domestic Violence

There are number of causes which can cause domestic violence to women in Tanzania and in world generally, the following are the some of those causes.

i) Traditional and Cultural Practices

Some Africans societies for example *Kurya* beliefs that beating up their wives is the way of showing that the husband loves his wife and also through when a husband beat his wife is the sign of controlling and having domination to his wife.²⁷

ii) It is learned behavior

A child who grow up from a family which practice domestic violence will learn from his parents and will do the same when he get married²⁸. The traditional practice of men beating wives as the sign of superiority and love can influence the generation or youth to continue practicing such traditional and cultural practices of beating.

iii) Sexual/jealousy and possessiveness

Research shows that violent men are mostly likely to perpetrate violence in response to their own sexual jealousy and possessiveness, their demands for domestic services such

²⁶*Ibid* note 18

²⁷*Ibid* note 19

²⁸<https://psychcentral.com> (accessed on 3rd July 2019)

as sex and also alcohol and other chemical substances may contribute to violent behavior and a drunken person has no control of his violence impulses.²⁹ If a man is very jealous and he cannot control his emotion then he might end up beating the wife without even considering the reason for the fight.

iv) Alcohol and drugs

Alcohol and drugs may contribute to violent behavior. A drunk or intoxicated person will be less likely to control his violent impulses toward their partner, so keeping such drinking or drug use episodes to a minimum may cause the husband to abuse his wife.³⁰

2.3.1. Survivor

A survivor is someone (female) who has been physically, sexually, and/or psychologically violated because of her sex or gender.³¹ Victim to perpetration of domestic violence are normally affected physically or psychologically, hence the need cancelling to copy with the situation. That's means that a survivor is a woman who is a victim of domestic violence.

2.3.2. Perpetrator

A perpetrator is a person who uses violence or other forms of violence against a person or group of people. To domestic violence against women perpetrators are normally the

²⁹R.A.Pollack, for better for worse, “*The Rule of Power in Modes of Distribution within Marriage*” in the America Economic Review 84,2(1994),150

³⁰ <https://psychcentral.com/>

³¹<https://dictionary.cambridge.org/> (accessed 3rd July 2019)

husband³², there number of reasons which can cause the person to commit the violence one can be alcohol and cultural practices. in United Kingdom domestic violence is not about physical act itself (beating) as in the position in Tanzania they also include that if a husband fails to give financial support to his wife then it will amount to domestic violence.³³

2.3.3. Social welfare officers

These officers are primarily responsible for implementing the women protection system (receiving referrals, investigating cases, ensuring women are removed to a place of safety when necessary, and facilitating alternative care options).³⁴ The social welfare office in Tanzania are responsible to protect and ensure that women who are affected by domestic violence can get their right and making sure that perpetrators are apprehended.

2.3.4. Police gender and children's desk

This is among the responses set in order to fight gender based violence as well as violence against children particularly in Tanzania. The Tanzania Police Force has made a decision to establish a Police Gender and Children's Desk in each police station and in order to achieve said decision, there is a need to adopt different guidelines that will help will help those personnel's in the police stations determine the right course of action to

³² *Ibid* note 28

³³ *Ibid* note 28

³⁴ *Ibid* note 27

take in this regard³⁵. The Unit has a partnership with the Ministry of Social Welfare, Gender and Children's Affairs in an effort to combat all forms of abuse against children and women³⁶.

The Police Gender and Children's Desk is a facility that addresses gender based violence and violence against children cases in a gender and child-responsive manner, managed and staffed by a trained personnel designated by the Officer Commanding Police Station. It is situated within the premises of the Police Station Offices. In the absence of a Police Station, the desk is established within the premises where the Police Station holds office.

2.4 Effects of Domestic violation

a) Physical effect

Domestic violence affects victim's health by causing effects like bleeding, miscarriage, dizziness, vaginal bleeding, unwanted pregnancy, having problems in their movement, suffering from various illnesses, losing a lot of weight,³⁷ death.

in the case of *Republic V Elvanse Cyprian Luvindu*³⁸ the accused and the deceased were cohabiting together and on the day of incident the left the house together and returned together drunk and the accused was seen kicking the deceased and she fell down. On the

³⁵ Ministry of Home Affairs, Tanzania Police Force: Guidelines for The Establishment of Police Gender and Children Desk, March 2012.

³⁶ <http://evaw-global-database.unwomen.org/en/countries/africa/sierra-leone/2010/family-support-units>(accessed on 3rd July 2019)

³⁷ <https://www.researchgate.net> (accessed on 13rd June 2019)

³⁸ (2003) High Court of Dar es salaam, case No.48 (unreported)

next day in the morning hours the accused left his room and went to inform the other tenants that he tried to wake up the deceased but the deceased is not responding and the post mortem report showed that the cause of death was suffocation due to strangulation and the trial Judge stated that the death was in the cause of domestic violence. In other occasions physical effect to the domestic violence can cause or result to death.

b) Mental effect

Also victims can be affected in terms of mental health such as depression, fear, anxiety, low self-esteem, obsessive-compulsive disorder, and post-traumatic stress disorder.³⁹ The scares or wounds that the victim of perpetration can cause the person to fill depressed and not comfort even to appear to the public.

c) Women losing jobs

Most women who are victims of domestic violence get some difficulties to perform well in their jobs because of stress, a lot of time they think on how they can escape from their violent husbands and this also may lead them to lose their jobs because of absenteeism due to illness as a result of domestic violence.⁴⁰ This can cause the women fill very depressed in general and even the mode of performance or reproduction role become very little.

In Tanzania some of women lost their jobs because of stress due to domestic violence and some affected physical, health and became incapable of doing jobs

³⁹*Ibid note 43*

⁴⁰*Ibid note 43*

d) Increase of street Children

Most of the streets children are caused by the domestic violence where the women decided to run away in order to escape the problem. Their children remain at home then due to lack of caring and basic human needs they move from home to streets in order to search for those essential needs.⁴¹ Most of street children run away from home because they do not have a mother to guide them and caring them since mothers left the house because domestic violence.

e) Use of alcohol and other drugs to deal with the pain

The victims of domestic violence can engage on using excessive alcohol and drugs in order for them to deal with the pain which they get inside their marriage because of domestic violence.⁴² Some of women /victims of domestic violence engage in the use of alcohol and other drugs for purpose of dealing with the pain of being beaten up by their husbands in their home.

f) Breakdown of marriage

According to section 66 of Law of Marriage Act, cruelty is the one of ground of breaking down of marriage (divorce) as it was shown in the case of *Martin Mwandege V Chrisensian*⁴³ Simeon where the husband beat his wife frequently and the court held this

⁴¹ *Ibid note 43*

⁴² <https://www.facs.nsw.gov.au> (accessed on 26th June 2019)

⁴³ H.C of Mbeya(P.C) Matrimonial Civil Appeal, Case No. 16 of 1978

act is amount to cruelty, so this means that domestic violence is also regarded to cruelty.

Most of Marriages in Tanzania are broken down

CHAPTER THREE

INTERNATIONAL, REGIONAL AND DOMESTIC INSTRUMENT ON DOMESTIC VIOLENCE AGAINST WOMEN

3.1 INTRODUCTION

This chapter provides for the legal basis and the policies on how they cover for the problem of domestic violence and this is divided into three phrases the first is on international legislations, the second is on regional level and lastly is domestic coverage.

3.2 INTERNATIONAL INSTRUMENTS

The researcher in this section going to evaluate and examine the international instruments on how they provided direction to state parties on how to meet their obligation to develop and implement legislation on violence against women and girls in general, particularly domestic violence. Domestic violence is a form of discriminating women as its obstacles' to women to achievement of equality between men and women since it violates the fundamental right and freedom of women and impairs or nullify their enjoyment of human right.

3.2.1 UNIVERSAL DECLARATION OF HUMAN AND PEOPLE'S RIGHTS OF 1948

This is an international humanitarian instrument which provides for equality of all human being without any kind of discrimination⁴⁴. The convention provides that “all human beings are born free and equal. In dignity and right of the same provided that

⁴⁴ The Universal Declaration of Human Right of 1948 Article 1

everyone is entitled to all right and freedom” no any discrimination of any kind such as race, color, sex, language religious, politics or other opinion, national other status.⁴⁵

Under Article 5⁴⁶ prohibits torture and degrading treatment from one person to the other, or state against a person, and also under article 16(2) it provides for protection of couples in the marriage and their rights. This instrument protects women against domestic violence by prohibiting torture and degrading treatment against women.

Despite the fact that its protects all human right by providing the principle of equality and human dignity, the one among the problem in relation to this declaration is that it's not binding it only act as precedent in human right, this means the declaration is not enforceable.

3.2.2 DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

This is among the international instrument which protects women against domestic violence and gives the meaning of violence against women as any act of gender violence which causes physical harm, sexual or psychological harm or suffering to women as it is provided under Article 1⁴⁷ protects women by providing their right to be free from violence/ domestic violence such as battery, sexual abuse, marital rape, as it states as follows

“physical, sexual and psychological violence occurring, in the family or general community including battery, sexual abuse of children, dowry related violence, rape,

⁴⁵ Ibid Article 2.

⁴⁶ Ibid Article 5.

⁴⁷ <http://www.suaire.suanet.ac.tz> (accessed on 13thMay 2019)

female genital utilization and other traditional practice harmful to women, non-violence and violence related to exploitation, sexual harassment and intimidation at work. In Education and elsewhere, trafficking in women, forced prostitution and violence perpetrate or condoned by the state”⁴⁸

3.2.3 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION

AGAINST WOMEN (CEDAW)

Under Article 1⁴⁹, the definition of discrimination against women is provided as being...“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” so this means that domestic violence is prohibited by this law because domestic violence discriminate women by infringing the enjoyments of their human rights to be free from torture on social ,cultural, civil , political or any other field and to be equal as men. Article 16⁵⁰ provides that women and men have the same rights in marriage and also it provides for their protection.

As stated under Article 2⁵¹ state parties to CEDAW must eliminate discrimination by adopting “appropriate legislations and other measure, including sanction where

⁴⁸ The Declaration on the Elimination of Violence Against Women of 1993

⁴⁹ Convention on Elimination of all Forms Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 December 1979, entry into force on 3 September 1981.

⁵⁰ *Ibid* note 54

⁵¹ *Idem* note 54

appropriate ..." and state must agree to establish legal protection of the right of women on equal basis with men and ensure through competent national tribunals and other public institution the effect protection of women and girls to any distressing act.

Generally the declaration provides for equality of all people before the law, this is to say were are treated alike without any discrimination and its where it protects women against domestic violence by stating they are men and women are equal and it eliminate customary practice in the society for example *Kurya* society which are based on idea of inferiority by beating up their wives as sign of power and love.⁵²

The optional Protocol to the Convention on Elimination of all Forms of Discrimination Against Women⁵³ provides that where it appear that there is accusation to violation or discrimination against women then complaints can be lodged by an individual as it has been shown in case of *A.T V Hungary*⁵⁴ where a victim of severe domestic violence brought a claim to the Human Rights committee against Hungary for failed to protect her. In 2005 the committee found that although A.T sought help from Hungarian civil and criminal courts and child protection authorities, the government failed to protect her with any assistance and its where the committee found the government violated its obligation set for protecting women against any violence.

⁵² *Ibid note 54*

⁵³ M. pagelow, "women-beating: victim and their experience" Beverly Hills sage 1981, p98

⁵⁴ Communication no 2 of 2003.

The convention also has open weakness as it's shown above in the case, it does not provide for the avenue for an individual, it can only be enforced against state and individual and not individuals themselves.

3.3 REGIONAL INSTRUMENTS

These consists international instruments that have tried to show the protection of women against domestic violence.

3.3.1 AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLE'S RIGHTS

This is one among the basic charters in Africa which do provide for the rights and duties of people, and obligation to states parties to it on protection of those rights sated under it.

It has been ratified by most African countries including Tanzania. Under Article 1⁵⁵ it provides for equality before law and Article 4⁵⁶ provides for respect to life and integrity this means that women shall be treated as equal with men and that they should enjoy their right to life and be free from acts that will cause the infringement of the enjoyment of this right such infringements include acts as domestic violence.

The other significant provision is Article 18 where it states that "States shall ensure the elimination of any discrimination against women and also ensure the protection of the right of women and children as stipulated in international declaration and

⁵⁵ African (Banjul) Charter on Human and People's Right (Adopted 27 June 1981,OAU Doc, CAB/LEG/67/3 rev.5,21 I.L.M. 58(982), entered into force 21 October 1986)

⁵⁶ *Ibid note 61*

conventions.”⁵⁷ This means that women have rights to be free from torture and should be protected against domestic violence

Article 2 of the charter provides that any individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the charter without distinction of any kind or any status.

Also Article 3 of the charter is relevant to domestic violence because it provides for the equality before the law and emphasize the principle of discrimination that is every person is equal before the law and they are entitled to equal protection of law, so this means women have right to enjoy their right and to be protected by the laws from domestic violence and to be given same treatment as men.

It's obvious that there have been some efforts by the international community toward the improvement of welfare of women. The main hindrance is that the government efforts which are slow in effecting reform which incorporate the spirit of the international community of enhancing protection against women in domestic violence

3.3.2 PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHT OF WOMEN IN AFRICA

This provides that women shall have the right to dignity inherent in a human being and to the recognition and protection of women and their legal rights. As per Article 3,⁵⁸ every woman shall have the right to respect as a human being and to the free

⁵⁷ *Supra* note 49, Article 18(3)

⁵⁸ Protocol to the African Charter on Human and Peoples Rights on the Right of Women in African of 2003.

development of her personality. This is to be implemented by the state, which should ensure that women are protected.

This shows that there are regional instruments which provides for protection of women against domestic violence because it provides that all people are equal before the law and they should be given same rights and protection.

3.4 DOMESTIC INSTRUMENTS

This part intends to show domestic laws and policies that tried to show protection of women against domestic violence in Tanzania.

3.4.1 THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA OF 1977(AS AMENDED TIME TO TIME)

The Constitution is the mother law of the country, and no law should be enacted that is contrary to it as per Article 30(5).⁵⁹ Article 13(6) (e)⁶⁰ prohibit torture or inhuman or degrading treatment. Article 12⁶¹ provides for respect of human dignity. The Constitution also states that

“No law enacted by any authority in the united Republic shall make any provision that is discriminatory, either in itself or in its effect”⁶²

⁵⁹The Constitution of United Republic of Tanzania of 1977(as amended from time to time)

⁶⁰Sikira, A.N., E.A. Mwageni and R.J. Salanga, 2010. Attitude of women towards gender based violence in Serengeti District, Tanzania. Journal of Continuing Education and Extension, 3(2): 1-23

⁶¹ *Ibid* note 65

⁶² *Ibid*

In the case of *Republic Versus Patrick s/o of Kiyeyeu*,⁶³ the accused was charged with offence of causing grievous bodily harm contrary to section 225 of the Penal Code Cap 16, R.E 2002 to Christina Lalika who were lived under Presumption of Marriage and the accused used knife to stab the victim and caused to her sustain wounds and the court held the accused guilty.

This means the Constitution protects women against domestic violence by proving that all people are equal as per Article 12⁶⁴ and should be free from torture and inhuman or degrading treatment.

3.4.2 THE LAW OF MARRIAGE ACT

Under Section 66⁶⁵

“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”.

The section prohibits the use of corporal punishment against a spouse. However it fails to provide the meaning of corporal punishment or what amount to corporal punishment and specific remedies which a victim of domestic can get before a court of law.

⁶³ Criminal case No.222 of 2006 in the Resident Magistrate Court at Iringa

⁶⁴ *Idem* note 65

⁶⁵ The Law of Marriage Act of 1972

Section 2 of the Corporal Punishment Act Cap 17, R.E 2002 defined corporal punishment as an act of whipping a woman so it is like an act of a husband beating up a wife and the act of beating up a women falls under domestic violence.

The law is silence on protection of women against domestic violence to those women who lives under presumption of marriage as per section 160 of the act which states as follows

“Where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married”.

The Law of Marriage Act is an Act that regulates the law relating to marriages, person and property right between husband and wife, separation, divorce and other relief and other related matters.⁶⁶ But the law does not protect women against domestic violence since it is silent on meaning of corporal punishments, remedies available to the victims of domestic violence as well as punishment to the perpetrators of domestic violence.

3.4.3. PENAL CODE⁶⁷

This Legislation is the sole Act for all crimes and punishment to those crimes in Tanzania, which deals with offences against morality. In Tanzania violence against women is dealt with under various laws mainly the Penal Code especially Chapter XXIV of the Penal Code deals with offences assault as per section 240 of the penal code

⁶⁶ Short title of the Act

⁶⁷ The Penal code Act cap 16 R.E 2002.

connected with other crimes of violent nature for example assaults and batteries including violence generally and wife battering in particular.

Section 241 of the Act provides for punishment of assault which states,

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor, and is liable to imprisonment for five”.

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 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.

The Act does not contain a specific provision on domestic violence further it does not criminalize marital rape and also it does not provide any remedies to the victims of domestic violence, failure to include marital rape as an offence in the penal code means that women are denied the protection of the law for sexual offences that occurs in marriages.

3.4.4. CORPORAL PUNISHMENT ACT CAP 17, R.E 2002

The Act under section 2 provides the meaning of corporal punishment which means in the case of an adult is “whipping” which is connected to domestic violence since is the act of beating up a wife.

3.5 INTERNATIONAL POLICIES

United Nations Development Fund for Women (UNIFEM) was signed in 24th May 2008 by Former President Jakaya Mrisho Kikwete in the campaign of “*Say No to Violence Against Women*” which aimed to protect women against domestic violence.⁶⁸

It shows the intention of the government of taking measures necessary in order to prevent domestic violence and to eliminate violence against women although the Law of Marriage Act is silent on remedies available to the women who are victims of domestic violence as well as punishment to proprietors of domestic violence in Tanzania

The policy focused to eliminate and prohibit any kind of forms of domestic violence to women in Tanzania, this emphasized women to report the perpetration of domestic violence and it show as well the intention of the government to protect women against domestic violence.

⁶⁸Legal Aid Services (LAS) is a free or subsidized services to eligible individuals or groups, mainly poor and vulnerable people, provided as a means to strengthen their access to justice Danish Institute for Human Rights (DHIR) (2011)

3.6. CONCLUSION

The existence of laws and policies in relation to protection and providing remedies against domestic violence to women in Tanzania are required to reflect to the standards of international instruments.

CHAPTER FOUR

ANALYSIS IN THE LAWS AND POLICIES RELATING TO PROTECTION OF WOMEN AGAINST DOMESTIC VIOLATION

4.0. General introduction to the Chapter.

The chapter gives a snapshot to protection of women against domestic violence in relation position of laws in Tanzania and in United Kingdom in relation to the aspect of the domestic violence. The principle of rule of laws require the adherence to it in which were all being treated equally without considering the position, race, gender or any other form of differences.

The aim of the researcher was to conduct the research in relation to the matter on how the laws of Tanzania are effective to cure the problem of domestic violence and other problem in relation to violence's against women as compared to those of United Kingdom in terms of remedies available to women who are victims of domestic violence as well as punishment to the perpetrators of domestic violence.

The report and publication from different organization and individuals shows that despite of the existence of Law of Marriage Act and other laws in Tanzania which prohibit domestic violence against women but still there are reports and case in Police Gender and Children's Desk and to the court of Domestic Violence against Women.⁶⁹

⁶⁹<http://www.stakeholderforum.org>[Accessed 19/06/2019]

4.1. Protection from Domestic Violence against Women

In Tanzania and United Kingdom domestic violence is prohibited, whereby domestic violence means abusive behaviour in a marriage which is used by one partner against his partner, this is being provided under section 66 of Tanzania Law of Marriage Act and In United Kingdom (UK) it is provided under part IV of Family Law of 1996 although in UK there is no single law concerning domestic violence⁷⁰

Despite not having principle legislation concerning with Domestic Violence against Women in Tanzania, Domestic Violence against Women is often treated under common assault charges or assault causing grievous bodily harm⁷¹ “any person who assault another is guilty of misdemeanour” and in case of causing bodily harm is also being treated as misdemeanour and under Law of Marriage Act Domestic Violence against Women is described to cover violent acts against spouse such battery. ⁷²

4.2. Comparative Analysis of Section 66 of Tanzania Law of Marriage Act and Part IV of the United Kingdom Family Act

The research basis is to make a comparative analysis on protection of women against domestic violence between laws of Tanzania and United Kingdom under remedies available to women who are victims of domestic violence. Whereby in order to understand the aim of the researcher to research on protection of women against domestic violence, the researcher will make comparative analysis on punishment and remedies which are being given to perpetrators of domestic violence as following;

⁷⁰<https://www.independent.co.uk> (accessed 3rd July 2019)

⁷¹ Section 240 of the Penal Code Cap 16 R.E 2002.

⁷²Section 66

4.3 Domestic Violence

In Tanzania section 66 of Law of Marriage Act provide for corporal punishment and it does not state what amount to corporal punishment but Section 2 of the Corporal Punishment Act defines corporal punishment as an act of whipping someone. Since the Law of Marriage Act is a law which governs right and duties of married couples then it should be a single law which governs domestic violence cases and to include the meaning of corporal punishment, what amount to corporal punishment, forms of domestic violence and punishment to those use corporal punishment to their wives in order for women to enjoy their rights of being free from torture or inhuman or degrading treatment which it also including marital rape.

The United Kingdom Family Law Act defines domestic violence as “*Domestic abuse is a gendered violation which is deeply rooted in the societal inequality between women and men. It is a form of gender-based violence, violence directed against a woman because she is a woman or that affects women disproportionately*”⁷³ this shows how the Act covers domestic violence widely and also the Act include forms of domestic violence in order for it to be clear relating to domestic violence issues.

⁷³<https://www.womensaid.org.uk> (accessed on 4th July 2019)

4.3.1 Divorce and Domestic Violence against Women

Domestic violence is a ground for divorce...“*Vinculo matrimonii*” is a Latin term literally meaning “*from the chains of matrimony*,” and which means a complete divorce.⁷⁴

A divorce is a legal action between married people to terminate their marriage relationship.

It can be referred to as dissolution of marriage and is basically, the legal action that ends the marriage before the death of either spouse.

In Tanzania the court is the only institution given powers and mandate to terminate the marriage and for the marriage to be terminated it require the parties to the marriage especially the one seeking the leave of court to show the sufficient cause or ground that the marriage has broken down irreparably.⁷⁵

The Law of Marriage Act provides grounds which can lead the court to grant order for the termination of marriage this includes Adultery committed by the Respondent such as,

- a. Sexual perversion on the part of the Respondent;
- b. Cruelty, whether mental or physical, inflicted by the Respondent on the Petitioner or the children, if any in the marriage;
- c. Willful neglect on the part of the Respondent; and

⁷⁴<https://www.upcounsel.com/lectl-divorce-the-legal-termination-of-a-marriage> (accessed on 28th June 2019)

⁷⁵*Ibid* note 79

d. Deserion of the Petitioner by the Respondent.⁷⁶

In order for a Court of Law to Grant a Divorce Decree the Court shall have regard on the above-mentioned factors amongst many other factors that may arise.

There is no degree of measuring to what extent can the spouse battery can constitute the right to the court of finding the marriage that it's beyond the repair. Then this can give room for the further continuation of the domestic violence against women.⁷⁷

In United Kingdom a victim of domestic violence can go to court and apply for injunction (non-molestation order and occupation) which are remedies to the victim of domestic violence against a perpetrator in order to stop them from contacting a woman who is a victim of domestic violence or forcing them to leave the house.⁷⁸ In Tanzania under section 139⁷⁹ provides remedy of molestation the Family Act did but the only problem is that the remedy is only available when the matrimonial proceeding is before the court of law or on or after the grant of a decree of annulment, separation or divorce. This shows that women who are victims of domestic violence who did not institute a case before the court or on or after the grant of a decree of annulment, separation or divorce cannot have this remedy compare to United Kingdom Under section 42 which state that a woman who is a victim of domestic violence can have this remedy at any time in order for her to be protected from a perpetrator of domestic violence, as well it covers couple who lives under presumption of marriage and those of boyfriend and girlfriend relationship.

⁷⁶ *Ibid* note 77

⁷⁷ *Ibid* note 69

⁷⁸ <https://www.familylawpartners.co.uk> (accessed on 3rd July 2019)

⁷⁹ Law of Marriage Act Cap29, R.E 2002

The Law Marriage Act in Tanzania and Family Law Act in United Kingdom both Provides remedy of divorce to women of domestic violence although in Tanzania a marriage must be broken down irreparably which influence the husbands to continue to use domestic violence against their wives.

4.4 Remedies for victims of domestic violence

In Tanzania the Law of Marriage Act under section 66 of Law of Marriage Act

“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”.

is the sole provision covering matters pertaining to acts of relation to domestic violence against women (corporal punishment), and it makes the act of using corporal punishment such as beating up a spouse to be unlawful the Act provides divorce as a remedy available to women who are victims of domestic violence as on ground of cruelty, cruelty must be excessive in marriage in order for women to apply for petition of divorce before the court of law and this gives power for husbands to continue to beat up their wives unlike to United Kingdom where a minor violence can be acceptable by the court as a ground of divorce .

In the United Kingdom domestic violence against a spouse is unlawful as in Tanzania, Part IV Family Law Act provides for Family, Home and Domestic Violence and the Act provides two types of Orders (remedies) which the victims of domestic violence can get which are,

1. A non-molestation order
2. An occupation order

1. Non-Molestation Order

Section 42 of the Family Law Act provides for a Non-Molestation Order, this remedy is used by the victims to prevent a perpetrator from using or threatening physical violence or to prevent him from harassing, pestering or intimidating his spouse.⁸⁰ The remedy is available at any time were the victim faces domestic violence it can either be in a situation where there is no any pending matrimonial case against a perpetrator, on or after grant of a decree of annulment of divorce ,the remedy also covers couples who lives under presumption of marriage.

In Tanzania this remedy is provides under section 139 of The Law of Marriage Act ,it shows how the remedy does not protect women who are victims of domestic violence against their husbands when they did not have pending matrimonial proceeding before the court of law or on or after the grant of a decree of annulment, separation or divorce.

In United Kingdom under Family Act there are two ways of obtaining a Non-Molestation Order.

- A. By way of an urgent application to the Court

⁸⁰<https://www.forbessolicitors.co.uk> (accessed on 3rd July 2019)

It is known as “without notice basis.” This means that the Order is made by the woman who is a victim of domestic violence before the perpetrator has any knowledge of the application. Once an Order is made, it has to be served upon the perpetrator.⁸¹

An Order will be only effective and enforceable once served upon the perpetrator and he has knowledge on that non- molestation order application , and it will need to return to the Court within a few days of the Order being made in order that the Court can review the situation. A woman who is a victim of domestic violence and perpetrator should be in attendance at the second Hearing and in case the Respondent (perpetrator) does not attend, then provided service of documents can be proven, the Court is likely to make a Final Order in his or her absence. If the Respondent does attend at the second Hearing, hopefully a Final Order can be made and a Non-Molestation Order will usually remain in force for 6 months⁸².

B. By notice.

In this a woman who is a victim of domestic violence and perpetrator are informed of the Hearing date and the Respondent (perpetrator) is served with the application in advance of the Hearing taking place. The perpetrator has the opportunity to attend the Court Hearing and challenge the evidence before the Court which was adduced by the victim of domestic violence, and non-molestation order can be made by agreement but,

⁸¹ Ibid note 84

⁸² Ibid note 84

if the evidence is challenged, then the Court will list the application for a Final Hearing.⁸³

The application of molestation order in United Kingdom is not different as it is in Tanzania whereby parties have to make an application to the Court of law.

2. Occupation Order

An Occupation Order is used when the future occupation of a property is in dispute. One person could effectively be required to leave the home because of his/her violence behaviour towards the other person or the effect that his/her presence is having on the children.

An occupation orders it defines who can live in the family home. It can also prevent the perpetrator from being in the surrounding area of the house and the victim can also get an occupation order if she has left home because of violent behaviour but want to return without the proprietor living there.⁸⁴

Also section 35(1) (a) of the Family Law Act provides that the right to occupy applies if the former spouse or former civil partner is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation.

In Tanzania the Law of Marriage Act does not provide this type of remedy in order to allow a woman who is a victim of domestic violence to return to the house in

⁸³ *Ibid* note 66

⁸⁴ *Ibid* note 66

circumstances where a perpetrator chase her away or to forbid a perpetrator to be in surrounding area of the house of a woman who is a victim of domestic violence in order to protect her against a perpetrator of domestic violence.

4.5 Punishment against perpetrator of domestic violence

In Tanzania under Section 66 of the law of Marriage Act which prohibit corporal punishment (domestic violence) it does not provide civil punishment against the perpetrator of domestic violence.

The Act is silent on how perpetrators of domestic violence should be punished according to it since it governs the relationship between couples in their marriage and perpetrators should not be left unpunished.

In United Kingdom under the section 42A of the Act it provide that it is an offence for someone to breach a non-molestation order as a punishment to the perpetrator of domestic violence, which is an offence for some to breach a non-molestation order

“42A. Offence of breaching non-molestation order

(1)A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.

(2)In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.

(3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.”

Section 42A (5) of the Family Law Act provides for punishment for breach of non-molestation order which is on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both and on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

So breaching a non-molestation order is a criminal offence and a power of arrest is automatically attached to the injunction, meaning the abuser can be arrested simply for breaching a non-molestation order without needing to have committed any other criminal activity and the a non-molestation order is filed with the Police so they are aware of the power of arrest and can exact it should any breach arise.⁸⁵

This means the Family Act gives punishment to the perpetrators of domestic violence when they continue to abuse their wives, so it shows how women who are victims of domestic violence are being protected.

In occupation order is breached by the perpetrator then he will be automatically fined.

This means that a breach is punishable by way of a fine.

The legislature requires adopting the position as how the Family laws in UK are provided and covering the molestation clause and providing punishment in cases in term of fine.

⁸⁵ *Ibid* note 66

4.6 Analysis of findings

Leila Sheikh⁸⁶, said to the “the Citizen website” that “various studies which some are conducted in Tanzania have shown that at least 6 of 10 women have experienced domestic violation within their marriage”⁸⁷

the 2013-2016 report from NGO’s in relation to domestic violence against women in Tanzania, according to a report on Gender Based Violence in Tanzania written to the International Centre for Research on Women, which collected data through interviews with male and female participants in the Dar es Salaam, Iringa, and Mbeya regions of Tanzania, physical violence is largely viewed as part of marriage. Women explained that they come to expect and even accept this violence because of prevailing community norms.⁸⁸

According to the Tanzania Legal and Human Rights Centre 2012 Human Rights Report, the Tanzanian constitution expressly provides for the rights of women.

“There are also police directives and programs which address issues of Gender Based Violence. For example, Tanzania’s Poverty Reduction Strategy Papers (PRSP) lists violence against women as one of its indicators of poverty, a feature that is rare among PRSPs in other countries. Also, the Ministry of Community, Gender and Development

⁸⁶ Propounded of feminist theory.

⁸⁷<https://www.thecitizen.co.tz> (accessed on 3rd July 2019)

⁸⁸ *Ibid* note 91

has established a national committee on gender based violence. Gender based violence is a criminal offence in Tanzania under Part XV of the Penal Code.”⁸⁹

According to the 2010 UNIFEM report domestic violence stands out as one of the most prevalent forms of Gender Based Violence. Globally, up to 70% of women murder victims are killed by their male intimate partners and wife beating alone occurs regularly in 85% of all cultures. This indicates that globally, the home is the most dangerous place for women to be ⁹⁰

So this shown that domestic violence is serious problem in our society and so the government have the duty to protect women against domestic violence.

The researcher found out through an interview of 10 women at Kihesa in Iringa municipality and they confirmed the existence of domestic violence in their societies and they also explained that domestic violence is caused by drunkenness, not providing their family in material and financial support, adultery, spending nights outside the matrimonial home without good cause and when their wives asks them they beat them up.

Police stations

Many police believes that domestic violence is a family matter which the government should be involved in their matter and on interview of 5 women three of them said that

⁸⁹<https://wewriteforrights.wordpress.com> (accessed on 3rd July 2019)

⁹⁰Tanzania Women Lawyers Association, *Review of Laws and Policies related to gender based violence in Tanzania*, Dar es salaam, Tanzania ,2014 page 7

they never get cooperation from to the police when they report to the police station when their husband beat them up and they were told to resolve the matter locally to go the family elders of religious elders in order to solve the matter and when they come back to their home the husbands started to beat them again⁹¹

when interviewing working officers regarding the issue of protection of women against domestic violence they said that woman injuries are not serious the police what they do is to give advice to her which is “the issue will be better if will be resolved at family level or other extra judicial intervention and wife should forgive him and continue their married life.

he goes further by saying that some women does not know their rights and if they goes to the police station without knowing their rights may cause her to get no help and the reason on why they did not know their rights is because of lack of education to know what their rights are and to know what has been done to them are not proper.

Weakness of police in enforcement of domestic violation

The research shows that most of women who are victims of domestic violence who reported their matters to the police were not taken seriously and this causes fear to those victims to report domestic violence to the police because of lack of seriousness when they report to the police and it encourage their husbands to continue to use violence against their women since the police are not taking the subject matter too serious

⁹¹ Inspector Gitaba Marua, iringa police station.

Challenge of prosecuting perpetrators of domestic violence

This data come from anonymous person where she says most of domestic violence cases as instituted to the court as assault as it is provided under section 240 of the penal Code since the law of Marriage Act is silent on the punishment for the proprietors of domestic violence

she said that these cause proprietors of domestic violence to continue to beat up their wives since the Law of Marriage Act is silent on protection of women against domestic violence and it also cause the victims of domestic violence to be afraid to report the matter to the police stations.

Conclusion

The position and standards provided by the laws, rules and regulation have to provide the similar position and remedies are those of United Kingdom in relation to basis punishment and remedies in order to protect women who are victims of domestic violence.

CHAPTER FIVE

GENERAL CONCLUSION AND RECOMMENDATION

5.1. General Introduction

Generally domestic violence is inhuman treatment against women despite the fact that women should be protected against domestic violence but still laws and policies have gaps on protection of women against domestic violence Tanzania under section 66 of the Law of Marriage Act Compare to UK Law of Marriage Act which protects the victims of domestic violence by providing injunctions which are known as an occupation order and a non-molestation order which protects the victims of domestic violence even if they are living under presumption of marriage unlike Tanzania.

This create environment for women in our societies all over the world to enjoy their fundamental rights equal as men does.

5.2. Summary of Research Findings

Domestic violence against women and other relating form of violence to women still exist due to that patriarchal system, and the laws existing to fail to address the problem in angle that could cut out the roots and make the perpetrators to be afraid and stop acting violently to women.

Statistics show that women who are living in the village are mostly affected by Domestic Violence against Women compared to those in towns and there reason to the

prevailing of violence to villages is that women in villages they no know nothing about their rights and possible ways to report and fight against Domestic Violence against Women, hence they prefer to settle the violence in traditional way which will normally leave the perpetrators unpunished and raise the rate of violence

The laws and polices need to be restructured so that they could cover all possible remedies or solution that could help to end the impunities of Domestic Violence against Women and Gender Based Violence.

5.3 Recommendations

Government should strengthen protection of victims of domestic violence by amend section 66 of Law of Marriage Act and include the meaning of spouse battery, remedy to the victims of domestic violence, punishment(s) to the abusers and this protection should be to both women who are married and those who are living under presumption of marriage.

Government should enact Domestic Violence Act which will be dealing with domestic violence cases general for it to cover remedies available to the Victims of domestic violence as well as punishment to the perpetrator of domestic violence.

The community should be sensitized to encourage women to report the cases of domestic violence to appropriate legal organs and there should be no encouragement for reconciliation if a women want to divorce their husbands because of battery (domestic violence), the cases should end up in court. Focusing on preventing repeated violence and the maintenance of a healthy relationship between the survivor and the perpetrator,

attention should be given to the creation of better women's shelters and community-based support services for women who are seeking assistance in coping with violence or safely leaving a violent relationship. There is also a need to create a more effective legal framework for women who have experienced violence to seek redress in the court of law. This will mean developing legislation that will support change in the perception of society so that violence against women is no longer deemed a private affair in order to elicit appropriate punishment for culprits. These essential and life-saving services will help to go some way towards creating an environment that will reduce, if not eliminate, the occurrence of violence against women.

The government should analyse all customary laws in Tanzania which infringe women rights and provide education to men for they to know that they have same rights as women, and they have the duty and obligation to change their attitude. Referring to activities applied during the early stages of Violence Against Women in an attempt to prevent the transmission of Violence Against Women culture to others, the focus needs to be on early detection of threats which could prevent disability and death resulting from Violence Against Women. National legislation should introduce effective legal and welfare provisions, including enabling and enforcing the immediate removal of the violent partner from the common household and the environment of the woman and her children, whilst fuller investigations are pending to ascertain longer term solutions.⁹²

⁹²<https://www.refworld.org/> (accessed on 3rd July 2019)

5.4. Conclusions

The government through the Legislature and other responsible organs in laws and policy making should amend the existing laws such as the Law of Marriage Act and adding the provision to it which could provide the possible remedies to the victims of Domestic Violence against Women. Also the penal code should be amended and also cover the criminal charges and liability to domestic violence against women even when the violation is not that not much serious but as long as it affect the other spouse and she intent to pursue it to responsible organs so as the impunities of Domestic Violence against Women and Gender Based Violence are eliminated

BIBLIOGRAPHY

BOOKS

S.E., Merry, *Human rights and gender violence, translating international law into local justice*. Chikago and London: The University of Chikago Press2006.

Stephen,C.M, Masson M. Judith Harris, Rebecca Bailex, *Principle of family Law*,2005.

Magoke. M, Monica E., Child widows silenced and unheard, Human Rights, *Human Rights Suffers in Tanzania*,2005.

Pollack,R.A, for better for worse,*The Rule of Power in Modes of Distribution within Marriage* in the America Economic Review 84,2(1994)

Standley,K, *Family law*,4th Edition,2004.

Cotran, E. *Restatement of African Law of Marriage and Divorce*, Kenya, Vol.11968

Levinson.D, *Family Violence in cross cultural perspective*, C.a sage, new burry park 1989.

Kassim, S (2006), *Women Research and Documentary project Human Rights and Gender on mainland Tanzania*, a paper presented On 6-8 Desember 2006, Oasis Hotel Morogoro

Renzetti,C.M *feminist theories of interpersonal violence* , Ellison publishers, Oxford 2008.

Page 1. M, women-beating: victim and their experience, Beverly Hills sage 1981

Mordecai,L, *Domestic Violence and its reverberation*, Nova Copyright, England,2006.

JOURNALS

Galabawa, J.C.J,(ed), *Paper in Education and development the Norwegian Programme for Development, Research and Education*, Vol 28, 2008.

Sikira, A.N., E.A. Mwageni and R.J. Salanga, 2010. *Attitude of women towards gender based violence in Serengeti District*, Tanzania. Journal of Continuing Education and Extension.

Ministry of Home Affairs, Tanzania Police Force: *Guidelines for The Establishment of Police Gender and Children Desk*, March 2012.

Tanzania Women Lawyers Association, *Review of Laws and Policies related to gender based violence in Tanzania*, Dar es salaam, Tanzania ,2014.

Bundara,A. *A longitudinal of test of social learning theory: adolescent smoking*. Journal of drug issues 26, 1996

NEWSPAPER

East African media company, Nation Media Group

WEBSITE

<http://www.Worldbank.org/gender/agency>

<https://www.theguardian.com/global-development-professionals-network/2014/>

<https://www.researchgate.net>

<https://www.facs.nsw.gov.au>

<http://www.suaire.suanet.ac.tz>

<https://www.refworld.org.uk>

<https://www.acesdv.org/domesti.tz>

<http://www.avanfoundation.org/cause/domestic violence->

<http://www.stopvaw.org/>

[https://psychcentral.com /](https://psychcentral.com/)

<https://psychcentral.com/>

<https://dictionary.cambridge.org/>

<http://evaw-global-database.unwomen.org/en/countries/africa/sierra-leone/2010/family-support-units>

<http://www.stakeholderforum.org>

<https://www.independent.co.uk>

<https://www.womensaid.org.uk>

<https://www.upcounsel.com/lectl-divorce-the-legal-termination-of-a-marriage>

<https://www.familylawpartners.co.uk>

<https://www.forbessolicitors.co.uk>

<https://www.thecitizen.co.tz>

<https://www.thecitizen.co.tz>

<https://wewriteforrights.wordpress.com>