

Sexual and gender based violence in Africa

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Sexual and gender based violence: everyday, everywhere, and yet ...

Daniel Moshenberg

The mathematics of contemporary sexual and gender based violence offer a grim graph of today's world. In a number of countries, evenly distributed across the globe, up to one-third of adolescent girls report forced sexual initiation. For example, a recent study suggests that in the United Kingdom one in three teenage girls has suffered sexual abuse from a boyfriend, one in four has experienced violence in a relationship, one in six has been pressured into sexual intercourse, one in sixteen say they had been raped. Mass rape of women and girls continues to be seen as somehow a legitimate military weapon. Reports suggest that, in Bosnia and Herzegovina, in a war that lasted a mere three years, somewhere between 10,000 and 60,000 women and girls were raped. Sexual violence against men and boys continues undaunted, unreported, understudied, and too often a source of ridicule and derision. According to a number of studies, somewhere between 5 and 10% of adult males report having been sexually abused in their childhood. Women suffer violence in health care settings, "including sexual harassment, genital mutilation, forced gynecological procedures, threatened or forced abortions, and inspections of virginity." Sexual violence in schools is off the charts. In Canada, 23% of girls experience sexual harassment.

In Iraq, which is engaged in a so-called nation-building exercise, part of that nation-building seems to involve, or require, sexual and gender based violence: "An increase in "honor" killings currently haunts the Iraqi political landscape but is receiving little U.S. media attention. Such killings are rooted in ancient patriarchal culture and represent the most severe expres-

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sion of a rebellion against modernity, the secularism of the global market. They bespeak Iraq's mounting social crisis." Women's corpses, and some men's, are the collateral damage, not of warfare but of so-called peacetime reconciliation and reconstruction. If this is peace, what constitutes war?

Meanwhile, the engineer of that nation-building project, the United States, experienced a 25% rise in rape and sexual assaults between 2005 and 2007: "Among all violent crimes, domestic violence, rape, and sexual assault showed the largest increases. Except for simple assault, which increased by 3 percent, the incidence of every other crime surveyed decreased." From this perspective, which is the developed and which the developing country?

Across the border, women, especially low-income women workers, disappear, repeatedly and violently. The State finally calls it femicide and passes a law. Women continue to disappear. Over 400 women have been murdered in the border city of Ciudad Juarez. The numbers of women, mostly low-income workers, who have been murdered in the state of Chihuahua, where Ciudad Juarez is located, qualifies the entire state as a femicide hotspot. And it's not alone. In Mexico, Baja California, had 105 women murder victims in 2006 – 2007. Chihuahua counted 84. Since 2005, over 650 women have been murdered in Mexico State, and the state of Guerrero has the highest murder rate of any state in Mexico, 5 of every 100,000 women.

And Guatemala continues to experience a femicide crisis. In 2007, over 700 women and girls were reported murdered.

Around the world, the numbers speak for themselves, but to whom do they speak, and who is listening, who is taking the count and who is assessing accountability? It seems the whole globe, in its entirety and in each

of its parts, is haunted by sexual and gender-based violence. Around and about the world daily, reports and studies on sexual and gender based violence are published.

Other reports look at the ways in which sexual and gender based violence spike in conflict zones and persist in post-conflict zones.

Some consider institutions. For example, many, and yet not enough, consider prison rape. There are reports of rape of juvenile offenders, rape of immigrant detainees, rape of remand prisoners, rape of convicted prisoners. And rape is only a small, if critical, part of the picture of sexual and gender based violence. Others look at workplace violence, such as sexual violence against domestic workers. There's sexual and gender based violence in schools, schools of all sorts. Physical households as well as family and kin structures are sites of sexual and gender based violence. The public is regularly scandalized, or not, by clerics and clergy of any and all denominations engaged in sexual and gender based abuse, of parishioners, of acolytes, of one another. Women in the military generally suffer sexual and gender based violence. Women in offices, women on farms, women on streets, women on public transport suffer sexual violence, suffer gender based violence.

Women, gay men, lesbians, transgenders, transsexuals, intersex, girls, boys around the world suffer sexual and gender based violence because of their attire. In some places, it's State policy. Wear a burqa, suffer both humiliation and State sanctions. In other States, don't wear a veil and you could end up in jail ... or worse. In other places, it's culture. Wear a short skirt, and be prepared for violence. Be prepared to be treated as a sex worker, because of course violence against sex workers is, if not acceptable, understandable.

Honor killings haunt the world, although they're not always referred to as such. Indigenous women disappear, other women disappear as well. This is but a partial picture, but it will suffice.

There is no geographical border to sexual and gender-based violence. It happens everywhere, and all the time. This is neither paranoia nor dystopia, nor is it an invitation to panic or despair. It is merely descriptive, and, again, barely so. If sexual and gender based violence is so prevalent, can it really be said to haunt

the world, or is that statement itself a specimen of naive optimism? Perhaps it should be said to constitute the world. Either way, whether a specter or a basic element, or both, the absolute ordinariness, the everydayness and everywhere-ness, of sexual and gender based violence suggests many questions, many avenues for research, many possibilities for collaboration and action.

Do sexual and gender based violence have a history, globally? It's one thing to say that in a particular place at a particular time, there was an increase or an abatement in sexual and gender based violence. It's quite another to look across the expanse of the world, or even a continent.

And what if that continent were Africa?

This Bulletin began in response to news reports of "corrective"

and "curative" gang rapes of lesbians in South Africa. These were then followed by news reports of a study in South Africa that found that one in four men in South Africa had committed rape, many of them more than once. We wanted to bring together concerned Africa scholars and committed African activists and practitioners, to help contextualize these reports. We wanted to address the ongoing situation of sexual and gender based violence on the continent, the media coverage of sexual and gender based violence in Africa, and possi-



Fikile Vilakazi (South Africa) Director of the Coalition of African Lesbians

bilities for responses, however partial, that might offer alternatives to the discourse of the repeated profession of shock or the endless, and endlessly reiterated, cycle of lamentation.

To that end, we have brought together writers of prose fiction (Megan Voysey-Braig), lawyer-advocates (Salma Maoulidi, Ann Njogu), poets (Chinwe Azubuike), trauma scholars (Sariane Leigh), human rights and women's rights advocates (Michelle McHardy), gender and transgender advocates (Liesl Theron), activist researchers (Sasha Gear). These categories are fluid, since every writer here is involved in various activist projects, advocates in many ways. The writers do not pretend to 'cover Africa', and neither does the collection of their writings. The writings treat South Africa, Nigeria, Zanzibar, Kenya, Sierra Leone. They are meant to continue certain conversations, to initiate others.

Methodologically, the authors argue for the importance of respecting the multiple intersections and convergences, the multiple layerings, that underwrite and comprise any single event of sexual or gender based violence, and that necessarily complicate any discussion of these at a broader level. For example, the study that reported that one in four South African men had raped women or girls, the study the news media reduced to that simple formula, actually was a research report that attempt to understand men's health and the use of violence in the context of the interface of HIV and rape in South Africa. In the end, the report came up with three sensible recommendations: "1. Rape prevention must focus centrally on changing social norms around masculinity and sexual entitlement, and addressing the structural underpinnings of rape. 2. Post-exposure prophylaxis is a critical dimension of post-rape care, but it is just one dimension and a comprehensive care package needs to be delivered to all victims and should include support for the psychological responses to rape. 3. HIV prevention must embrace and incorporate promoting more gender equitable models of masculinity. Intervention that do this effectively must be promoted as part of HIV prevention" That is, sexual and gender based violence begins and ends at the intersection of sexual inequality and gender inequality. Health and well-being begin with the work of transformation.

From varied perspectives and in different genres, each of the authors speaks a single truth. Conjuring away

the specter of sexual and gender based violence is not good enough. Professing shock at the discovery of sexual and gender based violence is worse yet. Treating sexual and gender based violence as exceptional likewise leaves the conditions and situation intact. The work of transformation, in Africa as around the world, is slow, long, and necessary.

About the artist Gabrielle Le Roux and her portraits in this bulletin

Gabrielle was born in London, raised mostly in South Africa and has lived in the Caribbean, London, Amsterdam and the Canary Islands. She is self-taught as an artist and started drawing portraits of people in her community when she lived in the Caribbean in the 1980s and then stopped drawing for many years. On returning to South Africa in 1992 she worked as an activist with women's rights, AIDS awareness and gay rights through various NGO's and institutions until 2000. During her four years running the Women's Media Watch doing advocacy, training and activism around the representation (and lack of it) of women in the media, she travelled to Cuba, Philippines, Montreal, Zimbabwe and London to give input in conferences and workshops on media and human rights issues. In 2000 she went to New York for the UN Beijing +5 Women's Assembly as part of the Global Women's Media Team. In 2001 she developed the concept of portrait and story projects on a return visit to the Caribbean and her first project was about women over the age of a hundred including the world's oldest woman. She drew and interviewed ten women in the island of Dominica and the result is Living Ancestors, a portrait and story project which she sees as a continuation of her activism.

More on Gabrielle and these portraits, go to <http://www.pambazuka.org/blogs/wsf2007/?cat=5>

Untitled

Megan Voysey-Braig

I am watching the street outside, from behind a greasy rain smeared window.

There is nothing to see. I stand here as thousands before me have stood here, at certain hours, certain minutes and certain seconds. There is nothing to see. The window used to be clean, used to be clear. Once I could make out the fine outline of hills in the distance, a bird straining against the wind.

There was even a curtain I could draw closed if I wanted to undress.

In the day the brown mud of the sun, moves across the walls, fills my mouth and silences it.

At night the sound of my bones trying to adjust, trying to accommodate, on stained yellowing mattresses.

Yes it is frayed in places, coiled and sleepless. From my hands where they cover my mouth to stifle screams, when I am alone and I rock myself, back and forth, so I can breathe again, short shallow breaths, I see that I am pinned; to this ground, the stars reel around me, the darkening black sky turns my guts. My legs are forced open. Objects are thrust into me. Cold objects, hot searing objects. Objects I would have never thought.

Today I think it is my sixth birthday.

The stink follows me everywhere. It is my own. They tore me up. Five, ten, twenty, I cannot remember,

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smelling of sweat and smoke. Sometimes and all at once I remember everything. I curl up on the ground, into the ground.

The roof above my head (in my head) disappears and it feels to me that all the people in the world have clambered the walls to look in, to laugh at me and to curse me. This shame I am made to feel, this rejection. They throw stones at me, I cover my head with my hands, my arms, I reach for the threadbare blanket, but it does not cover me. I know they mean to drive me out of my home, out of my body and my mind, out of dignity, and everywhere in my head the sound of running feet suffering the same.

The water in this place no longer runs. I cannot wash myself. I cannot rinse this stench out from the rag I have tied between my legs. It fills and leaks, runs down my legs, the dogs sniff at me and then not even the dogs.

No one knows my name. No one cares to know my name. There are no other voices here but my own. I keep my voice in my hands, inert in my lap.

I have accommodated this pain. How remote it is and out of the way. It will take me years to get there, to recognize the landmarks. Yes, this is where you once were, this is who you were. How absurd those vanished hills seem now, the ideas I might have had. Who will ever reach me here, who will ever find me here?

I can feel bruises on my body. There is a small square mirror here, that hangs from a rusted nail, the taste of my blood and iron in my mouth. The bruises spread purple and grey like thunder clouds across my thighs, disappear up my dress, grabbing and pulling at my hair. I can hear my bones cracking, my head snapped back. Copious fucked up drinking. The swinging bare bulb hanging from its wire, the room sways, lights up,

dims, lights up, dims. I am 30. My children in their intermittent shadow corners; watch.

I have been dried out, stuffed with leaves and bitter smelling herbs. He likes it that way. Walking is difficult now. I can sit if I lower myself slowly onto the end of the bed. It hurts less when lying down, not moving at all.

He will come again I know, when ever he wants to and whenever he feels like it and leave me no time to heal.

The minute hand lies like lead in my chest, the second hand brings a blade to my throat. I learn how to beg, just like thousands before me have begged to be spared.

The first time I was touched I froze. Perfectly, soundlessly. Hot breathe on my neck, strange whispering words in my ear. I was told never to tell. Never to tell. Never to tell.

Today the door has disappeared. I watched, as if removed from myself how they filled in the space (where for a second I could see the whole world and what it means) and sealed me in.

How they were happy and pleased with what they had done, happy to know that I would always be just like this. Bound, mutilated, existing in abject poverty, raped a million times over in any given year. The seconds quicken in me, coils tightening, and I can no longer breathe. I bring my hands to my face, I cover my eyes, I think of the hills, I dream them, I think of the dress I wore, the savage expression in his eyes, what it felt like what did it feel like what did it feel like what did it feel like I cover my eyes I cover my eyes howling I cover my eyes so that I will not see myself dying one more time.

I write words on scraps of paper, later I eat them, feel them pulp and swell in my mouth. When there is no more paper and no more ink, I scratch the words into the walls with my nails, with the blunt nibs of my fingers. This is what I liked, this is what I dreamed of. No, never this, I never would have imagined this.

I am old now and almost dead. In the day the brown mud of the sun, at night...

This is where I was, I was here, this was my life.

Zanzibar GBV advocacy : important lessons for future legal reform strategies

Salma Maoulidi

Background

The passage of the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) in 1979 revolutionized advocacy for women's rights in global, national and local spaces. Subsequent global conferences on women, especially those convened by the United Nations, squarely put women's rights issues on national agendas. Specifically, the naming of violence against women a human rights violation to be considered as a moral and legal crime by CEDAW, the Vienna Declaration and the Beijing Platform for Action (BoA) reinvigorated local activism against gender based violence (GBV).

The GBV concept has its roots in feminist epistemology, in its articulation of women's human rights. Specifically, it focuses on violations directed against women and other vulnerable groups and attempts to assess:

Trained in Law (LLM from Georgetown) with a focus on Human Rights and Women's Law, Salma Maoulidi is the Executive Director of Sahiba-Sisters Foundation, a women's development and advocacy network working mainly with Muslim and provincial women and youth with members in 12 regions of Tanzania concerned with the impact of cultural and religious discourses on women. Salma has over 20 years in the women's and social movement in Tanzania working on and writing about legal and development related issues from an African woman's feminist-activist perspective. Salma was one of the legal experts providing input from CSOs in Tanzania that contributed to the SOSPA reforms. She continues to use her experience working as an activist and as a consultant in various local and regional forums. Furthermore, she has initiated and coordinated a number of grass roots based Gender Based Violence campaigns including the latest one against sexual corruption at the workplace involving women in low paying jobs in four regions. In 2007, she was one of the lead consultants for the Ministry of Labour, Youth, Women and Children Development to undertake the first GBV prevalence study in Zanzibar.

- the Provision of GBV services by the state as well as other actors. These include post-rape care; medical care; and legal aid and support services;

- efforts to Prevent GBV by the state as well as relevant actors either through education programmes, putting in place an infrastructure that minimizes incidents of abuse e.g. screening of offenders; or the reduction of secondary victimization;

- the level of Protection afforded to victims and survivors of GBV such as affording them with safe houses or protection orders; and

- State keenness to Promote GBV services such as by making the necessary budgetary and human resource allocations, at all levels, to GBV related services; and enacting and adopting relevant GBV laws and policies. The punitive aspect of the law is an important indicator of the state's willingness to enforce laws.

Kithaka (2008) describes sexual offences legislations cropping up in the region in the last two decades as intended to prevent and protect people from harmful and unlawful sexual acts. Armed with these International Human Rights instruments, women human rights activists around the world campaigned for legal reform to bring local laws up to universal standards. Chiefly, they engaged the state demanding it to take action to safeguard the personal integrity, dignity, liberty of women and children as required under international law. One area women in Tanzania immediately began organizing around was against sexual crimes committed against women and children. The concern was to protect women against crimes perpetrated by the state or its agents as well as by intimate partners.

Breaking the silence on various forms of violence

against women was the primary advocacy strategy deployed by activists resulting in three main outcomes. Foremost, it led to the increased reporting of GBV incidents in communities, especially among women who had suffered prolonged abuse¹. Secondly, it led to there being increased attention, outreach services and advocacy on these issues by civil society organizations as well as concerned citizens ensuring greater media coverage of the issues. Notably, the increased advocacy led to the passage of the Sexual Offences Special Provisions Act (SOSPA) in 1998, the first popularly instigated legislative initiative in Tanzania.

More than ten years after the passage of SOSPA, how has the law enhanced protections for vulnerable groups? In this paper, I will use the experience of legal reforms in Zanzibar to explore this question. Specifically, I will look at how the justice system translates and gives force to the legislative intention of the law. The study and conclusions are informed by an extensive review of laws governing morality² as well as reported cases in the High Court Criminal Division Registry. Information was also derived from interviews with functionaries in law enforcement and the judiciary, particularly those who deal with GBV matters in Zanzibar, carried out between 2005 and 2006. Another important reference is the GBV prevalence study undertaken in Zanzibar on behalf of the ministry responsible for women and children affairs in 2007.³

The genesis of GBV advocacy in Zanzibar⁴

1. Without doubt the critical role of the Tanzania Media Women's Association (TAMWA) was instrumental in the early successes of GBV advocacy. For greater details see, Lema, E (Ed.) (2008) 20 Years of Tanzania Media Women's Association (TAMWA).

2. Describing GBV offences of a sexual nature as "crimes of morality" is a colonial legacy and reflects a Victorian concept of propriety with regards to sexual relations.

3. I served as one of the principal researchers for the study. The ministry concerned is the Ministry of Labour, Youth, Women and Children's Development but since the name changes periodically I will retain the usage of the ministry responsible for women or children's affairs to identify it. This Ministry acts the national coordinator for gender equality and equity outlining the appropriate mechanisms for gender mainstreaming.

4. Although Zanzibar is part of Tanzania, it is semi-autonomous and has a separate legal and judicial system.

Compared to the Mainland, GBV advocacy in Zanzibar took off much later. This could be explained to, among other things, the reluctance to bare sexually explicit content in public, as well as the relative low reporting of GBV incidents in law enforcement bodies and the media. Like on the Mainland, it would be the work of the Tanzania Media Women's Association's (TAMWA) Zanzibar Office that would set the spark. The association's coverage of the government's practice to incarcerate pregnant un-wed mothers surfaced some of the human rights violations women and children continued to endure in the isles contrary to the spirit of CEDAW. An effectively orchestrated media campaign called for legal reforms against discriminatory legal provisions in various laws that penalized or discriminated against women on account of their sex.

At another level the 'outing' of sexual offenses can be linked to the dual pandemic of HIV/AIDS and poverty which were intensifying in the early nineties as Tanzania gradually abandoned state sponsored welfare policies and programmes. The Tanzanian media raised the alarm about "cleansing" practices to either rid oneself of the HIV virus or the poverty bug. Journalists linked the rapid increase of sexual abuse of young children to HIV/AIDS after they learnt that some wanga⁵ advised people infected with HIV that sleeping with a virgin, would cure them of the virus. Equally, they advised the emerging crop of local businessmen that sleeping with young virgin girls or boys would increase their luck in business. While many women and children were being sexually violated some were being killed for their sexual body parts, another practice associated with poverty cures.

In Zanzibar, the arrest and incarceration of one Bwana Kitangi who was long suspected of defiling and sodomizing young children provided an impetus for civil society organizations to pursue legal reforms in the law with vital support from the Ministry responsible for women and children affairs. Certainly, the link between women's vulnerability to violence and HIV infection prompted calls for greater measures to minimize women's and children's risk to HIV infection through sexual violence. Likewise, the egregious nature of sexual crimes against women e.g. rape, gang rape, sodomy, ravishing of sexual parts and the like raised added security concerns for women.

5. Traditional healers or witch doctors, like the shaman, people consult for their different problems.

The Sexual Offenses (Special Provisions) Act No. 7 of 1998

The Sexual Offenses (Special Provisions) Act was passed amidst public outcry and intense lobbying against what many decried as immoral crimes committed against vulnerable groups. Although women were disproportionately affected, the attacks on children helped to win public sympathy over the issue⁶. Hitherto its passage activists' attempt to prosecute abusers of sexual or domestic violence often failed because of laws that were outdated or inappropriate to protect certain groups like children and people with disabilities. Similarly, the successful prosecution of GBV cases failed due to the dismissive attitudes of the larger society, as well as the inability of law enforcement bodies to take GBV issues seriously.

Before the passage of SOSPA in 1998 sexual offences were contained in the Penal Decree of 1934, a law reflective of colonial preoccupation with morality. Therefore, SOSPA amends this law fundamentally by modernizing it. Foremost, the Act adopts gender sensitive language. Also, it includes both minimum and maximum sentences⁷ and expands the option for punishment to include imprisonment, corporal punishment, fine and compensation. In fact, SOSPA makes compensation mandatory upon conviction (§121) a development that could be read to recognize the wrong and harm done to survivors of violence au lieu of blaming them for the violence as was often the case.⁸

In many ways, the SOSPA reflects ongoing concerns with rising and new forms of crimes committed against women and children, not only in Tanzania but across the world such as trafficking for sexual and labour exploitation⁹; sexual harassment and prostitution; and cruelty towards children including compelling them to

6. This is a critical fact in view of the more radical demands being presented by a more autonomous women's rights movement to the establishment as well as to a rather conservative society.

7. For example, see §127, §144 or §145.

8. Also see, §298A of the Criminal Procedure Decree Cap

14. In many cases, courts are also obliged to prescribe fines and award corporal punishment.

9. §156. This includes surrogacy.

undergo FGM¹⁰. It is also an attempt by the government to stay abreast of developments in international Human Rights Law. For example, §148 raises the age of consent to a sexual act for girls to eighteen years while the former law excused such acts, if committed on girls as young as 14, as long as the defiler believed she was older.

The 1998 Act requires a lower standard to prove sexual crimes. Similarly, punishment imposed is more severe. New crimes are also introduced in the law. For example, prostitution, defined as offering the (human) body for consideration, is introduced as an offence and procurement of prostitution is explicitly recognized as a crime. The Act criminalizes non-consensual sex for minors and women including consent obtained by giving money to a child or through threats¹¹. Also, it doubles the punishment for acts of gross indecency against minors compared to people of the same age.¹²

Sentences under the 1998 law are much stricter than the former law. Conviction for rape (§120), as well as gang rape (§121A), for instance, is life imprisonment. The law does away with the requirement for corroboration to prove rape demanding only proof of penetration regardless of there being ejaculation or the use of force.¹³ Moreover, an accessory to the crime of rape receives the same punishment as the offender. An attempt to carnally know a boy or girl, if convicted, attracts a 25 year sentence with corporal punishment.¹⁴

The Penal Act of 2004

In 2004, the Zanzibar legislature¹⁵ took the additional step to include SOSPA within the Penal Act with a dual objective: First it would make the law more readily accessible to functionaries in law enforcement and the judiciary; and secondly it would ensure that SOSPA has the same status as crimes in the principal legislation. Offences against morality are contained in Part XV of the 2004 Penal Act and comprise of 39 sections i.e. §124 through §163. Although most provisions of

10. §153A

11. § 145B

12. § 145A

13. §120 (3) (a) and (b).

14. §125 (1)

15. The Zanzibar House of Representatives

the 1934 and 1998 legislations are retained, there are significant additions to the 2004 law, reflecting changing social realities, as well as political considerations.

Notably, the 2004 Act introduces new crimes mainly of marital rape (§125(2) (a) and (e); lesbianism (§153); the sexual exploitation of children (§155); same sex marriage (§157); and sexual harassment (§158). However, the law fails to provide the standard to prove a number of offences essentially making it difficult to charge anyone with the crime. For example, under Sections 132, 150 and 152, sodomy is a crime when performed against young boys not when done against women and girls. Nevertheless, the law demonstrates a willingness to break the silence against violence rather than keeping sexual crimes under wraps. Also, it shows a willingness to prosecute people who are otherwise held in esteem like public officials (§125(3) (a)); officials in remand homes (§125(3) (b)); hospital officials (§125(3) (c)); and traditional healers or religious leaders (§125(3) (d)).

While there is an attempt to use gender neutral and gender inclusive language in the law, the law still demonstrates a bias towards the male sexual norm. For example, homosexuality between men is punished more severely (14 to 25 years and a fine at Tshs.700,000 about USD700) than is homosexuality between women (five years and Tshs.500,000 fine about USD500). Moreover, sexual crimes committed against males attract higher sentences than those committed against other groups including women or people with disabilities.

Thus, anyone who indecently assaults a woman or girl, upon conviction is liable to 3 to 14 years in jail (§ 131 (1) and (3)) while for those who assault young boys are liable upon conviction to a jail term of not less than twenty five years (§152). Provisions of this kind indicate a male centric notion of 'natural' sexual rela-

tions. In the present context of increased advocacy on sexuality based rights such provisions pose an equal protection challenge as to the criminalization to a life style choice between consenting adults.¹⁶

Holes in the Law

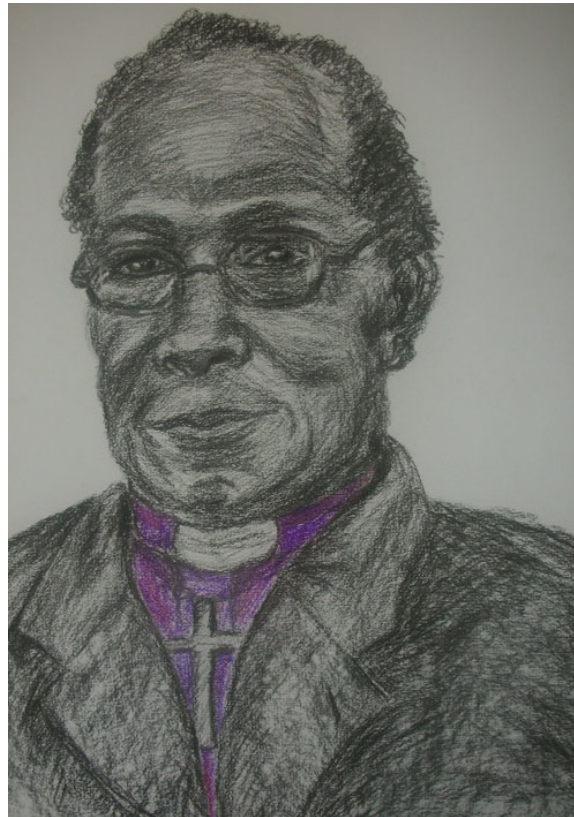
GBV laws are scattered in various legislations including SOSPA, the Penal Code/Act, the Education Act, the Law Marriage Act and the Spinster and Single Parent Children Protection Act 2005. However, as a concept GBV is a much broader than what is currently

contained in the legal framework where the focus is mainly on sexual crimes. Despite the presence of a robust legislation, reports of GBV crimes, especially sexual crimes, remain high while the conviction rates for sexual crimes and GBV generally remain low in the isles. The Zanzibar GBV study established that 40% of sexual offenses cases fail due to insufficient evidence. Additionally, culprits escape the arm of the law due to institutional weaknesses such as case delays or transfers, improper collection and storage of evidence, faulty charges and conflicting laws and jurisdiction.

A major finding in the Zanzibar GBV Study is the serious conflict between the substantive law with procedure. For instance, the Penal Act provides for a maximum sentence of

thirty years or life for rape, but courts of first instance where most matters are heard only have jurisdiction to pronounce sentences of between 3 to 7 years. Most cases heard at the lower courts are rarely appealed availing little opportunity for justice to be done. In addition, whereas GBV cases should normally be heard under criminal jurisdiction, the GBV study found that incidents of GBV are addressed in formal and infor-

16. Undoubtedly, the clamp down on homosexuality was influenced by the tense political climate prevailing in the isles at the time where government policies were attacked by both the official opposition as well as religious groups.



Bishop Christopher Senyonjo (Uganda)

mal structures. Formal structures comprised of the Sheha's Office; Courts; the Police; the Kadhi's Court; and Hospitals.

Informal structures comprised of family and religious structures. Each structure is guided by its own set of laws and rules. Medical staff, for example, comply mostly with medical guidelines when carrying out examinations on survivors of sexual assault with very little guidance on what the law says about such assaults. An added dimension to GBV prosecution is Zanzibar's dual court structure: the normal common law courts and religious courts. GBV is a criminal matter and thus subject exclusively to criminal jurisdiction. However, in practice, the Kadhis Court which is only empowered to hear civil matters regularly hears and adjudicates over GBV matters. Religious structures treat cases of sexual assault as civil cases with little indication that they recognize them as crimes under the law.

Furthermore, public institutions like the police, local government or hospital don't always treat GBV as a cognizable offence. One Sheha, for example confessed that he took suspects to the police station supposedly only "to scare them so that they realize the gravity of the problem". The fact that many cases are dropped before they are heard by a competent prosecutor or a court of law is indicative of how the law enforcement machinery approaches sexual crimes. Most institutions investigated were not proactive about addressing GBV incidences but acted only if moved. And even then, rather than enforce the law, most institutions were happy to follow the whims of the families when dealing with GBV incidences.

A review of cases of sexual offences in the High Court Criminal Registry reveals that few victims of sexual crimes are compensated for the harm endured. What purpose is then served to have a progressive legislation when the same is impracticable? Is the situation just a matter of legislative oversight or does it reflect a general reluctance to act decisively on sexual crimes because doing so would implicate men who often assume the role of moral policemen, and by so doing, defeat the notion of women being the weak moral element¹⁷?

17. I am referring here to the Islamic notion that describes women as '*fitna*' (commonly translated as chaos but in this context as temptresses) and which absolves men for any indiscretions they commit while blaming women for any crime against their person by default.

Early in 2009 the Tanzania Court of Appeals, the highest court on the land circulated its draft rules for comment. These rules deal mostly with procedural aspects of civil and criminal cases. A number of lawyers in Zanzibar complained about the absence of relevant rules in key legislation suggesting that courts in the isles operate without the benefit of clear operational guidance. Anne Kithaka also notes that in Kenya many sections in the legal framework are not operational for lack of regulations to make them effective. For instance Section 39 of SOA requires the Registrar of the High Court to keep a register and data bank of convicted sexual offenders. Likewise Section 47 empowers the Minister to prescribe regulations on the contents of the data bank. Section 329 (A) requires the Chief Justice to make rules and regulations to guide the manner in which Victim Impact Statements can be received and used by the court.

Absence of Effective Institutional Responses

Compared to other countries in the region, Tanzania made quick and great strides in so far as legislating against GBV, especially in fighting sexual violence¹⁸. Nonetheless, efforts to criminalize the same have attracted much resistance, more so from the legislators and even the public officials whose obligation is to enforce the law. While speaking to the national legislature in the January 2009 Parliamentary session, the Minister of Justice is quoted in the media to call for reduced sentences for the crime of rape¹⁹. Surprisingly, this same Minister, then a Deputy Minister, is quoted in an earlier news piece admitting that at 15 girls are still biologically and psychologically immature to marry or have sex²⁰.

18. The Kenyan Sexual Offence Act only passed in 2006 while in South Africa it was passed 10 years after it was first proposed by the South African Law Commission in 1998. Accordingly, these laws have had the benefit of incorporating major lessons from other jurisdictions.

19. See among others, Anil Kija, Analysis: "Outdated laws, SOSPA and EPA Cases", in This Day Tuesday February 3, 2009; Anna Joachim, "Wanaharakati wamng'ag'ania Waziri Chikawe", in Tanzania Daima February 12, 2009; and Benedict Sichelwe, "Chikawe awavaa wanaharakati", in RAI February 8, 2009.

20. See "Tanzania Government to amend girls age consent for marriage" in Afrol News/IRIN of 10 November 2008.

Yet, cases of sexual and other gender related crimes committed against women and children inundate the ministry responsible for women and children and various civil society actors²¹. Moreover, over 75% of all public institutions interviewed during the Zanzibar GBV Study reported receiving cases involving gender based violence (GBV). In over half of these institutions GBV matters comprise 41% of the caseload while in four of the 12 institutions interviewed they constitute over 50% of its caseload. All institutions identified sexual assault as the highest type of complaint coming before them. Attempted rape was identified by 11 institutions, in some institutions comprising about 30% of the caseload.

Women are more likely to report GBV crimes to institutions. Girls are more likely to be victims of sexual violence than women or male children. Interviews held with medical personnel in various district hospitals in Unguja and Pemba confirmed that a high number of female children exhibit prolonged sexual activity which suggests protracted incidences of sexual abuse which is largely unaddressed. The same was confirmed in law reports. Even so, the Zanzibar GBV study consistently found medical examiners not reporting to court to give evidence or prosecutors who rarely gave other functionaries feedback on outcomes of cases. This has given rise to a situation where departments addressing GBV are constantly at logger heads with the ministry responsible for women and children or civil society organizations, the blame game comprising a major feature of the institutional relationship.

Similarly, the study found that local government and religious officials regularly inhibit the law from taking its course. In case of rape or sexual assault they preside over hastily arranged marriages on the demand of the girl's parents, the concern being to save the situation at hand not to comply with the law. Other than the fact that such a practice forces the girl to relive a traumatic experience, marrying the girl to the rapist, not only rewards the criminal but also attempts to legalize his crime. These marriages are short lived and often leave women and girls destitute, raising young families on their own.

The lack of an enforcement and monitoring mecha-

21. Notable among them are organizations of people with disabilities such as UWZ, ZAPDD or ZANAB which all report incidence of abuse against their members.

nism fails to ensure compliance with the law. As matters stand the victim or survivor of violence stands alone in that they have no automatic right to legal representation or other types of legal and psychotic support.

Sexual offenders and GBV perpetrators operate with impunity mainly because national-level responses to GBV remain weak, if at all existent. In Zanzibar, there is not a single institution dedicated to GBV survivors or victims. Also, public institutions that could help women like the ministry responsible for women are toothless to enforce most provisions of GBV law like maintenance in case of neglect of children.

Certainly, the effective prosecution of sexual crimes under the law requires different actors at different levels complimenting one another in making and substantiating a legal case. In reality, there is very little interaction and cooperation between these bodies in prosecuting GBV crimes. Presently, there is no connection between social work, law and medicine something that makes an integrated approach to legal and social issues in the medical field impracticable. Overall, there is little effort to monitor compliance with GBV law in public institutions. Moreover, the absence of reliable data on GBV incidence means that it is difficult to establish the impact if any of available measures. Also it results in weak institutional responses denying women, girls and children survivors of GBV legal relief. GBV victims suffer in guilt and silence, allowing the perpetrators of GBV to abuse other victims with impunity.

Despite the move to merge SOSPA provisions in the Penal Act, laws related to GBV are not readily available to all law enforcement functionaries. The Zanzibar GBV study found that 70% of people interviewed in institutions report not having copies of any laws related to GBV as opposed to 30% with the relevant laws. An equal number of functionaries report never having read or going over any of the relevant GBV provisions. Additionally, most judicial, health and administrative personnel have not been trained in applying provisions related to GBV law. Although some magistrates believed it was enough to know the law to apply it effectively, few appreciated that by their nature GBV crimes required additional skills to enable legal personnel and the police to effectively work with a survivor or victim of GBV lest they relapse to old habits. Also, functionaries need specialized training in sexual

abuse crimes so that they do not omit important medical-legal information crucial in proving the crime as discovered by the Medical Legal Institute in Brazil.²²

Prevailing Attitudes vis-à-vis the Law

Ann Njogu suggests strongly that VAW and the violation of women's rights, at peace time as well as during conflicts, is indicative of a crisis in masculinities. Rosemary Okello on her part attributes incidents of gender violence to gender inequalities. Public awareness and knowledge about GBV remains low in the larger Zanzibar society resulting in many cases being unreported; or summarily dismissed as petty when reported. In the Zanzibar GBV Study, more than 65% of individual respondents did not know of any law related to GBV while about 40% of institutional informants claimed never hearing of SOSPA.

Values, embedded in culture, religion and patriarchy very much influence the outlook of the law with regards to regulating the moral framework in the isles. For example, the Spinster and Single Parent Children Protection Act of 2005 absolves men from a moral responsibility with regards the consequences of an illicit sexual act. It only requires he maintains the child until it reaches eighteen (sections 5(1), 8 and 9). However, and perhaps borrowing from Islamic jurisprudence, the law does not expect the father to have a protracted relationship with the child, stopping the maintenance order if he marries the mother.²³

Parents whose daughters have been defiled are mostly concerned with saving face, a preoccupation entertained by law enforcement bodies. Accordingly, the rapist may be forced to marry the girl; or the two families may come to some settlement about the unborn child. Generally, sexual Offences against minors attract lower fines compared to say those imposed on consenting adults accused of homosexuality. Sex with a minor is only discouraged if such act occurs between people who are not married since it is acceptable that

22. This body was empowered to analyze sexual and physical violence but because staff at the Institute did not have specialized training in sexual abuse crimes key information went unreported compromising the cases.

23. see §13 (1). Certainly, marriage is no guarantee that he will maintain the child. Conversely he may divorce the mother leaving the child in need defeating the object of the law.

pubescent girls can be married off.

A 2005 WHO Study found that 50% of women have experienced intimate partner violence. According to the TDHS 2004 violence is an accepted part of the male-female relationship. Women can be beaten if she burns the meal, argues with her husband, leaves the home without his knowledge, neglects the children or if she refuses to have sex with him. Anne Kithaka (2008) notes the subtle discrimination in the legal framework whereby marital status and cultural relativism are being used to deny a certain section of women constituency from the communal calabash of justice.

The Law Contrasted with Judicial Practice

In the Zanzibar GBV Study, 31% of informants working in institutions dealing with GBV reported not using the Penal Act in matters concerning GBV. Subsequent interviews and case reviews reveals that the prosecution and the bench in Zanzibar use their discretion more readily than the law when handling GBV crimes as demonstrated in the following case:

A 17 year old girl was raped by her mother's lover. The magistrate issued a lower sentence because he established that prior to the rape, the girl was already sexually active albeit not with the rapist. He was doubly prejudiced when, at the time of the trial, he found she was pregnant with another man's child. He also admits taking into consideration the fact that the rapist was known to the household. Because he could not bear sending a 27 year old man to prison for raping a promiscuous girl, he handed a sentence of 7 years!

Additionally, court officials still required corroboration to prove rape even though the legal standard is solely proof of penetration. One female magistrate interviewed justified the importance of corroboration for those who alleged sexual violence. "If there is no corroboration", she explained, "Men will be imprisoned on vendetta". Routinely, legal and health personnel require evidence of bruises or the use of force to prove rape even though the law recognizes the possibility of rape in instances where a party may be tricked or coerced into having carnal knowledge, such as through false representation or being drugged.

Public uproar over sexual crimes remains great but the quantity of reported cases hardly reflects the gravity the matter. Legal practitioners consulted during the research blamed the society for being unwilling to prosecute such crimes. For example, a Regional Magistrate asserted that during her time at the bench she only knew of two cases where the parents of a child who had been violated were adamant about prosecuting the accused for the crime.²⁴ However, reviewed cases strongly suggest that the legal process may actually deter victims and their families from seeking redress through the courts. After suffering a traumatic experience it is not uncommon for families and survivors to wait for months, if not years before the investigation is concluded and the case for sexual assault is heard to conclusion before a competent and impartial court of law.

Since delays are common, many parents and survivors may be led to believe that it is not worth the trouble to subject themselves through another degrading process. The longer the case takes the greater the possibility of key evidence to be lost or forgotten. Unreasonable delays led one parent to complain on record over the stalling of his child's case which remained pending because the prosecutor was on study leave. Assigning a new prosecutor would mean starting a fresh case. The parent challenged this practice as denying the wronged child justice. Cases are also dismissed on account of lacking expert witnesses e.g. health personnel not attending court sessions to give their expert opinion or poor prosecution.²⁵

Concerns of corruption were universally voiced more so in so far as obstructing the legal process against

24. Interview with Hon. Salma Maghimbi.

25. Letter written by Juma M. Abdulla with reference PHQ/Z/574/67 written on 3 November 2003 to the Principal Secretary Ministry of Health

dealing appropriately with the perpetrator of violence.²⁶ Local attitudes are partly to blame for the state of affairs since most prefer to deal with "whom they know" to either bend or expedite the legal or judicial process, inviting corrupt elements to take advantage of a population that is largely illiterate in legal matters. Survivors and victims of violence who are unable 'to buy' their justice are routinely compromised by law enforcement officials keen to maximize profits from the misfortunes of others. Ethical considerations have little bearing on their professions.



Victor Mukasa (Uganda) Director of Sexual Minorities Uganda, SMUG

In practice, no case of sexual assault is entertained absent a Police Form Three (PF3). The requirement to present a PF3 in all GBV cases is problematic and more so when it involves a sexual crime. Foremost, in a human resource strained health sector their admissibility requirement e.g. to be filled by a designated medical officer, is hard to realize. For instance, it is hard to find the caliber of medical officer empowered to fill the form in most peripheral public health facilities. Also, the actual form is unsatisfactory for recording sexual crimes in detail. The size of the form, roughly one third of an A4 paper, does not motivate health officials to include additional information or diagrams which may assist to elaborate the injury. Likewise, the options to fill out the form are limited to superficial injuries and not other types of injuries²⁷.

In addition, there is a problem with the instructions issued to establish whether a crime has taken place or not. For example, during the GBV Study health officials reported being asked to establish whether the girl was a virgin and not if she has been raped while police

26. see for example case of *R vs. Mzee Amiri Kajele* where a parent complained about why an accused who should be in court was roaming freely in the street.

27. Essentially, this form is filled in cases of injury from 'accidents' necessitating treatment.

officers reported being asked by parents to establish if the girl is pregnant not to investigate a rape. Purportedly, the rape allegation comes up only if the young girl is pregnant and the parents want to save face by threatening the impregnator to marry her lest he is slapped with a rape charge.

Furthermore, SOSPA provisions are defeated by the presence of laws like the Spinster and Single Parent Children Protection Act 2005²⁸ which is loaded with moral connotations about acceptable sexual behaviour and seeks to deal with the consequences of 'illicit sexual intercourse' i.e. extra marital sex and having children out of wedlock. In most cases it is the woman who is punished for what is understood to be sexual indiscretions while formal and informal institutions collude to ease the burden on males.

Devising Responses Guided by Experience

Maoulidi and Mallya (2007) and Mlanga (2007) argue that GBV should be approached in a multi-sectoral and integrated way. The substantive law taken alone cannot facilitate a successful prosecution of sexual crimes under the prevailing judicial system. This review also underscores the necessity of support mechanism for victims and survivors of GBV. In England, DV advisors act as liaison between the victim and various statutory agencies. This will minimize the likelihood of cases being dropped prematurely. It will also reinforce a sense of support for victims and survivors of GBV. The establishment of specialist DV courts across the country also helps in expediting GBV trials.

The court requires expert opinion to help secure a conviction, but such opinion is limited to the opinions of civil servants who are ill advised and trained in the law. Generally, the courts have been less willing to consider ongoing research on GBV as well as opinions from advocacy organizations in both the isles as well as the Mainland. Perhaps the admissibility of video recordings, photographs and statements of GBV survivors can strengthen evidence tendered to the court rather than relying solely on expert witnesses.

Moreover, the judicial system in Zanzibar needs to remain abreast of legal development and scholarship on

28. A spinster is defined as a girl between 16 and 21 years in the old law and 18 and 21 in the 2004 law

GBV. For instance, numerous researchers have pointed out the involvement of people close to the family, including blood relatives in cases of child sexual abuse (Rumashi and Banda, 2003). Similarly, the Zanzibar GBV study established that adolescent girls were disproportionately victimized in cases of sexual violence. A similar finding was made earlier in the United Nations Study on Violence against Children and by the Horizon Study where among 21 women who reported being sexually abused before the age of twelve, eight were abuse by a family members, five were abused by a neighbour, three were abused by a family friend, two by a male worker in the house and one by a male friend. Only two respondents were assaulted by a stranger. Therefore the view that rape and sexual assault is perpetrated by people alien to the victim or family is untenable.

Overwhelmingly, GBV advocacy and services are spearheaded by CSO. But rather than going at it alone or working in opposition to the government, Wamai emphasizes strengthening CSO relationships with provincial organizations in enforcement efforts. Maendeleo ya Wanawake in Kenya, for instance, works with local police and chiefs to do GBV case follow up. In Tanzania, CSOs like Sahiba-Sisters Foundation are implementing community responses in close collaboration with newly established women police units, community police and legal outfits.

Capacity building in critical skills to manage GBV is thus an important aspect of GBV enforcement mechanism. GBV training should be an integral part of the formation of law enforcement bodies as well as local government officials. Training should consider both the substantive as well as the procedural aspects and must be supplemented by relevant work tools such as the GBV Reference Manual a joint initiative between the AG 's Office in Kenya and WiLDAF. The manual expounds the law, sets standards and recommends best practices to various levels of providers e.g. medical practitioners, activists and investigators.

In addition to international human rights instruments, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the SADC Declaration on Gender and Development among others, require African nations to recognize full gender equality. Also, they require nations to provide the minimum standard in identifying and mapping GBV prevalence. Further, it calls for the pe-

riodic assessment of the level of institutional response to address GBV incidences.

Monitoring GBV prevalence, as well as legal and judicial practice, is thus critical to giving existing GBV laws life. The SADC Gender and Development Protocol calls for targets and benchmarks to reduce gender violence in the region. Pamela Mhlanga's article is informative in so far as appreciating the selective application of the SADC Gender and Development Declaration in respect to enforcing the law relating to marital rape. She notes that only 9 sub-Saharan African countries, including Tanzania, recognize marital rape.

Equally, there is an urgent need to investigate available mechanism to respond to GBV incidents at different levels. Certainly, information about the status quo is critical to inform future GBV advocacy strategies and institutional responses. A welcome development is the incorporation of VAW statistics in the TDHS since 2004. The AU is considering initiating a VAW fund to address the problem of enforcement of GBV laws. An equally commendable development in the region is the Waki Commission Report which isolates sexual and GBV for special attention following the post election violence in Kenya.

Ann Njogu asserts that political will is required to profile sexual and gender based violence at par with other serious crimes. Tanzania has already developed a GBV Policy. Kenya is presently considering a national policy framework to guide in the implementation and enforcement of SOA in compliance with the law. Meanwhile there must be efforts to strengthen the prosecution of GBV crimes. England, for example, has instituted specialist Domestic Violence Courts while Turkey makes pathology services in criminal cases available in the court house²⁹.

Kithika calls for a paradigm shift in service delivery system, seeking to make them consumer friendly and sensitive. Close monitoring of GBV cases by CSOs cannot be under emphasized. Media Women's Association in four Eastern African countries recently launched a Media Code on Violence. While the code mainly targets the reporting of case involving child sexual abuse, the idea of a code can also be popularized to other professionals to underscore the ethical dimensions of

29 While this attracts its own problems, what remains key is facilitating access to GBV services, especially after the violation.

GBV advocacy. In sum, there is an urgent need for an oversight body to police the administration of justice, especially in GBV cases.

Conclusion

In many respects the legal framework in Zanzibar has made great strides in redefining gender based violence and crimes of a sexual nature. SOSPA attests to the influence of global advocacy efforts in recognizing at locals contexts explicit crimes against women outlined in CEDAW and furthered at key conferences on women including Vienna Conference on Human Rights, ICPD and Beijing. The HIV/AIDS pandemic and the particular risk posed to victims of sexual crimes also influenced strong and deliberate measures to be taken against sexual offenders.

Existing laws relating to GBV contain some strong provisions but lack an enforcement mechanism to oblige institutional compliance as envisaged under various international, regional and national instruments. Significantly, the legal framework remains ineffective because it is toothless for lack of enforceability. Likewise, women's rights continue to be compromised because they are analyzed within a religious context instead of being linked to the legal and political framework which demands de facto and de jure gender equality.

The lesson from the GBV study in Zanzibar for future reforms suggests that law reform initiatives must simultaneously emphasize substantive and procedural aspects of the law. Also, it suggests a strong need to periodically monitor and review judicial practices in so far as their compliance to specified legal standards. Certainly, an effective law rests upon a constant critique of judicial practice against people actual experiences in the legal process. Also it needs to take cognizance of emerging knowledge, and practice in the field. It is clear that the courts in Zanzibar confine themselves to the raw form of the law and rarely, if at all, seek the benefit of studies in the field of GBV when presiding over GBV cases. This denies them the opportunity to elucidate and develop the law consonant with the peculiarities of the Zanzibar legal context.

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ACRONMYS

AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CSO	Civil Society Organization
DAW	Division on the Advancement of Women
DV	Domestic Violence
e.g.	for example
i.e.	that is
GBV	Gender Based Violence
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
MLYWCD	Ministry of Labour, Youth, Women and Children Development
MoHSW	Ministry of Health and Social Welfare
PF3	Police Form 3
R	Republic
SADC	Southern Africa Development Cooperation
SOA	Sexual Offences Act
SOSPA	Sexual Offences Act
STDs	Sexually Transmitted Diseases
STIs	Sexually Transmitted Infections
§	Section
§§	Sections
TDHS	Tanzania Demographic and Health Survey
Tshs.	Tanzanian Shilling
UN	United Nations
USD	United States Dollars
UWZ	Umoja wa Walemavu Zanzibar
VAW	Violence Against Women
vs.	versus
WiLDAF	Women in Law and Development
WHO	World Health Organization
ZAPDD	Zanzibar Association of people with developmental disabilities
ZANAB	Zanzibar National Association for the Blind.

Searching for the will to conscientiously prosecute sexual crimes in Zanzibar

Salma Maoulidi

Introduction

The passage of the Sexual Offences (Special Provisions Act) (SOSPA)¹ in 1998 intended to promote the prosecution of crimes of gender based violence (GBV) more broadly. Specifically, it sought to strengthen the protection of victims and survivors of sexual violence. In 2004, the Zanzibar legislature, the Zanzibar House of Representatives, amended SOSPA further including it in Part XV of the 2004 Zanzibar Penal Act with the objective of making the law more readily accessible to functionaries in law enforcement and the judiciary, and therefore facilitate its implementation.

Since the legislative victory, few efforts have been made in the isles to ascertain whether the law is living to its promise of availing victims of GBV better protections and justice. This article seeks to review avail-

1. Act No. 7 of 1998.

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able case law on sexual crimes to examine the extent justice institutions seek to implement the intention of SOSPA and the Zanzibar Penal Act of 2004. Hopefully, the insights obtained from this inspection will enable activists and public officials consider further legal and extra legal measures necessary to afford victims and survivors of sexual violence greater protection under the law as well as institutionally.

A problem buried in contrast to its enormity

The case law on crimes against morality is scant. For this study, a total of ten cases were available for review. Very few of the cases involving sexual violence that are heard at district and regional courts go on appeal to the High Court. This is in spite of the fact that there is a greater likelihood for miscarriage of justice at courts of first instance. At the time of this research, the cases that were available in the High Court Criminal Registry involved coerced sexual crimes. Most of the cases involved incidents of sexual assault by a male adult on male or female children, mainly adolescent girls.

The few cases that made it to the High Court are often dismissed on technicalities, not so much on the substance of the law. Perhaps for this reason, Zanzibar is yet to develop her own body of precedent with regards to sexual crimes or the standards under which specific sexual crimes would be defined and tried. Moreover, there are very few conviction rates for sexual crimes. Among the cases reviewed there was only one conviction in the case of *R v. Mzee Abdulla Suleiman* or the *Kitangi case* which we will refer to later. This begs the question of whether the new law facilitates convictions of people charged with sexual crimes or makes it harder to convict and punish them as envisaged by the law.

On the whole, reviewed cases indicate that fewer wom-

en report sexual crimes against their persons, a fact also established by the GBV Zanzibar Study². This may be partly due to the fact that they may feel ashamed to publicize the violation against their person in a society that predominantly still blames the victim for bringing the misfortune on themselves. But perhaps a bigger factor is the prevailing practice to establish whether a sexual offense has taken place or not, one that requires the deflowering of a girl or woman. Since women are less likely to be virgins, they cannot prove forced entry!

Cases in the Zanzibar High Court Criminal Registry show that there is a high incidence of child sexual abuse in the isles, a fact that is also confirmed by the GBV Zanzibar Study. The case files indicate that the children were being sexually assaulted on a regular basis. Many of these children are under 12, with the oldest sexually assaulted child, being a girl of 16 while the youngest, at the time of the trial was eight years old. The suspects are usually people very close to the children, in a care relationship to the child like an uncle, a *madrasa* teacher³, a neighbour, which may explain the fact it takes a while before a parent becomes aware of the crime being committed.⁴

Cases doctored to fail

In a number of cases, charges against the accused are dropped because the court finds that based on the evidence the accused has been wrongly charged⁵. In a few cases the charges are amended often from a more serious charge of rape to a less serious charge of indecent assault.⁶ For example, in *R vs. Khalifa Hassa*

2. The Zanzibar GBV Prevalence Study sponsored by the Ministry of Labour, Youth Women and Children Development.

3. A religious school teacher.

4. A similar finding was made by the Horizon Study where among the 21 women who reported being sexually abused before the age of twelve, eight were abuse by a family members, five were abused by a neighbour, three were abused by a family friend, two by a male worker in the house and two by a stranger and one by a male friend.

5. *R vs. Amton Rafiel Saimon*, for example, the accused was charged for rape but court ruled he was charged under a wrong section and he must have been charged for defamation.

6. See for example the case of *R vs. Khalifa Hassan* where the original charge sheet stated the offence as *kubaka* or

Kaita, the charge sheet was amended to read indecent assault even though sex had clearly happened for fear that a rape charge would not stand. In view of the fact that this case was filed after the law was amended, requiring a minimum standard of proof to convict an accused person, one wonders why a charge of grave sexual assault under §156 was not substituted instead considering that the crime is more severe and the standard of proof less strict.

Changing the charges routinely results in fewer convictions of those accused of sexual crimes; or in case of conviction, to the accused being tried on a lesser charge, which ultimately attracts lower prison terms or compensation amounts. If this is the case, it begs the question why the Director of Public Prosecution (the DPP) who commonly tries criminal cases on behalf of the state is not willing to revise a losing strategy in protecting victims and survivors of gender based violence.

The records on file, as well as the GBV Zanzibar Study, suggest strongly that a weak prosecution of GBV related cases, especially crimes of a sexual nature begins not in the court room but with the arrests and drawing up charges. As it is police officers and the DPP seem to be fumbling with the law, not being quite sure what charge will make a conviction stick. Alternatively, it is they, and not the court, who rule on the merit of the case deciding what charge is appropriate or not to convict the accused. Moreover, it is questionable why the prosecution feels obliged to charge the suspect narrowly when the law allows for multiple charges to be drawn up increasing the risk of being found guilty under multiple counts instead of a single charge.

Importantly, the weakness in drawing up appropriate charges against persons accused of committing sexual crimes may indicate the presence of bigger issue in need of resolution. Chiefly, it could indicate that the law is impractical as it is and may need to be amended to facilitate the course of justice, especially for victims and survivors of violence. Secondly, it could suggest that there is an urgent need to strengthen the capacities of prosecutors in drawing charges and prosecuting sexual crimes.

Equally important to review is the practice of law enforcement functionaries in how they handle sexual assault cases. The GBV Zanzibar Study indicated that rape but was actually convicted on indecent assault.

many cases fail for lack of strong evidence to make the charges stick beyond a reasonable doubt. In the ten cases reviewed, in only one was the child examined within twenty-four hours of the assault, something that facilitated conviction⁷. Instead the records show how evidence is being destroyed, many times unknowingly, such as by parents or guardians washing the child; but also because of poor judgment of the attending police officer or the investigating officer⁸. Indeed, it is not uncommon for these public officers to delay investigating the crime or seek to make a deal between the parties so that there is less work to do and they gain some benefit from the deal.

Furthermore, while activists have been demanding for legal institutions to deal more forthrightly with rape incidents, especially incidents committed against children this is far from the reality in Zanzibar⁹. Although the amount of bail has been increased, none of the case files reviewed charged bail under USD100, about one and a half months salary. To post bail, an accused demands two sureties and a letter from the *Sheha*¹⁰, to guarantee the applicant. In most cases the *Sheha* does not object to the posting of bail, even if it concerns someone who is notorious for sexually abusing children or for harassing women.

Prosecuting the crime is also rendered difficult on account of the jurisdiction of courts. While the statute prescribes maximum sentences, in actual fact these are hardly pronounced because courts of first instances have limited jurisdiction in passing out actual sentences. For example the maximum sentence a court of first instance can hand down is 7 years imprisonment. Consequently, sentences passed are not as harsh as envisaged under the Act, ranging from a few years in jail, with or without corporal punishment.

7. *R vs. Abrahman Suwedi Samalia*

8. When someone goes to the police with a complaint, the first person they meet is a desk officer who simply records the complaint. The case is then assigned to an investigating officer. Many times connecting with an investigating officer can take days.

9. Some for instance want the crime to be equated with murder and to deny those accused of sexual violation bail especially since granting them bail ultimately results in their freedom.

10 An official presiding over the smallest administrative unit of local government, the *Shehia*.

Applying an uncertain standard of proof

To prosecute a rape crime the court requires a *prima facie* case of rape. This means that there must be proof that there was carnal knowledge which is established and corroborated by penetration. However, the current law does not specify the object of penetration, although it is assumed to be the male sexual organ. Accordingly, under the law, women cannot be accused of rape.

The law requires proof of illicit or unlawful sex to establish a carnal crime. This is established by proving that the parties are not legally married or separated; and that both have capacity to consent to the sexual act. Also it is immaterial, in law, whether or not there is ejaculation or force. Yet, the practice of courts has been to neglect this legal standard and to instead apply a more personalized standard. Thus while in at least seven of the cases reviewed there was proof of penetration, the court considered the fact that there was no semen to associate the accused with the crime when making a ruling. In another instance, prior sexual activity raised doubt as to the “immediate” incidence of rape such that the cases of children who were found to habitually engage in sexual activity by the court were dismissed because there was no obvious incidence of bruising or tearing which coincidentally are not the legal standards to determine the crime of rape.

Furthermore, in at least seven of the cases the court dismissed the case not because it failed to establish that intercourse did take place, but because it suspected that there was a more sinister motive on the part of the parent or guardian of the victim to bring the case. This was the situation when a mother tried to bring her son’s *madrassa* teacher before the law after she suspected him of sodomizing her son. Effectively, the legal battle ceases to be about the victim, and is transformed to be about settling scores between the accused and the parents of the victim. In other instances the court is influenced by the testimony of persons who do not have authority to give expert opinion. For example in one case the court followed the opinion of the victim’s mother who concluded that there was no penetration because her daughter could walk by herself and not because a medical examination had proved otherwise.¹¹

11. *R vs. Khalifa Hassan Kaita*.

Other standards inferred from the cases reviewed include shifting the onus, even in making an arrest against a suspect, on the person alleging the crime!¹² Since almost all of these cases involve minors it suggests strongly that the onus is being shifted to a person who legally is incapable of consenting to the crime to prove that a crime was indeed committed against their person contrary to the law which criminalizes intercourse with a minor even if the minor consented to the sexual act; or if the minor misrepresented their age¹³. Also, the law rules out consent obtained by giving money to a child or through threats¹⁴.

Corroboration is required and established if another party witnesses the crime or becomes privy to the information first hand such as by the confession of the accused person.

All the while the law does not allow corroboration from the child, who often is the only party who can speak with authority about what was done to them. Otherwise, there is the problem of hearsay in admissibility of evidence. It is interesting to note that while risk to contaminate others with HIV/AIDS aids influences courts to make a conviction to deter others from the practice, not a single court ordered an HIV/AIDS test or other types of tests to determine if the child has been infected with STDs/STIs, even where evidence suggests that the child is emitting some foul discharge¹⁵.

Powerlessness, Vulnerability and Equal Protection

Consistently, the court penalizes children for not reporting the crime immediately after it happens without regard to the Statute of limitation¹⁶. This is done

12. In *R vs. Shehe Juma Ame*, for example, an imbecile was raped in her home. Her brother caught them in the act but in dismissing the suit the court reasoned that the brother should have caught and overpowered the suspect in the act, since he was in a compromising state.

13. This is a significant departure from the old law where a suspect could claim being misled as to the age of his female victim.

14. §145 (B).

15. In *R vs. Ame Ramadhani* court establishes presence of vaginal and anal sex

16. In one case the Magistrate dismissed the case because the victim reported the offence to his grandmother

in spite of the fact that numerous studies confirm that given the nature of the crime, it is quite normal for children to feel angry and even reclusive about what has happened to them¹⁷. The *Lancet*, for instance, notes that most forms of violence are not unique incidents but are ongoing and can even be continued for decades.

The question of informed consent influences not only public opinion but also the bench in so far as sexual crimes are concerned. In the only case where there is an outright conviction, *the Kitangi case*, the boy was considered too young to agree to a sexual encounter. The *Kitangi case* involved a 50 year old man accused of sodomizing a five year old boy. This followed a protracted period of media reports of young boys being abused sexually. Mzee Abdulla Suleiman was consequently apprehended and convicted on the evidence of his young victim. Also, the fact that there was bruising on the young boy indicated to the court that he was forcefully entered. Nevertheless, courts have not always ruled in favour of abused children more so when they are assumed old enough to acquiesce to the advances of the adult, even if in fact they are still minors under the law as is demonstrated by the bulk of cases cited herein.

Victims and survivors of violence appear as a star witness in their own case. What they say depends very much on what they are asked by the prosecutor. An accused person can seek mitigation for his crimes. This makes it hard for victims to emphasize the gravity of the crime committed against their person but allows an aggressor the benefit of negotiating for their liberty/life something a young person when violated is denied.

Whereas the UN In-depth Study on VAW acknowledges that VAW is both a cause and a consequence of deeply ingrained inequality between men and women the law and legal practice evidences favouritism on account of sex in addressing incidents of sexual crimes. For example bail for crimes involving sodomy, which mostly involve young boys, is routinely posted high-

on the third day while the Statute of Limitation in criminal cases does not place such restriction in prosecuting an offence once it becomes known.

17. See for example S.F Rumisha (2004), "Child Violence and Sexual Abuse in Tanzania" or WHO (2006) "Global Estimates of Health Consequences due to Violence against Children".

er than in cases involving rape which mostly involve young girls.¹⁸ Also the likelihood to believe and find in favour of a male victim is greater than in cases female children are defiled. Yet medical personnel interviewed at different locations for the GBV Zanzibar Study, as did the reviewed cases, confirmed that a high number of female children exhibit prolonged sexual activity, strongly suggesting that underage girls are subjected to protracted incidences of sexual abuse which remain largely unaddressed.

Zanzibari society seems more likely to tolerate sexual activity with minor girls, as long as they are married to someone. However, the law prohibits older but unmarried girls i.e. “spinsters” engaging in sexual activity lest they lose their chastity. No similar concern is shown towards male children. Moreover support services for survivors of GBV are inexistent, inadequate or shunned (Banda, 2003). The impunity perpetrators too often enjoy results in part from the trivialization of GBV issues. Likewise, the victims of abuse may be threatened during or after legal process something that may affect their willingness to persist with the legal process.

Conclusion

Sexual Offenses (Special Provisions) Act is a testament to legislative reforms in light of growing sexual crimes against young children of both sexes, as well as women. Existing anomalies in dealing with GBV institutionally, though acknowledged by public officials and civil society generally, continue unchecked. The impasse in firmly dealing with GBV crimes may directly impact people’s willingness to pursue and prosecute GBV crimes. Also, the reluctance of judicial officers as well as law enforcement officers to proactively address the weaknesses in law and in practice suggests that while there is a revolutionary piece of legislation to tackle GBV crimes, specifically sexual crimes, there lacks a will among those vested with the responsibility to interpret and implement the law in a manner that ascertains that the legal objective is met.

18. e.g. in case of *R vs. Ahmed Twahiri* bail was set at Tshs.500,000 while bail was posted at the same amount in only one rape case. Otherwise the bail rates were relatively less for other types of sexual crimes e.g. indecent assault at about Tshs. 100-300

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ACRONMYS

AIDS	Acquired Immune Deficiency Syndrome
CSO	Civil Society Organization
DAW	Division on the Advancement of Women
DV	Domestic Violence
e.g.	for example
i.e.	that is
GBV	Gender Based Violence
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watch
MLYWCD	Ministry of Labour, Youth, Women and Children Development
MoHSW	Ministry of Health and Social Welfare
PF3	Police Form 3
R	Republic
SOSPA	Sexual Offences (Special Provisions Act)
STDs	Sexually Transmitted Diseases
STIs	Sexually Transmitted Infections
UN	United Nations
VAW	Violence Against Women
vs.	versus
WHO	World Health Organization
Tshs.	Tanzanian Shilling
USD	United States Dollars

DEFINITION OF TERMS

The bench: refers to members of the judiciary hearing a judicial matter i.e. magistrates or judges.

Kadhi: A Muslim judge with authority to conduct marriages. In Zanzibar it is an official position.

Sheha: a government representative at the basic level of governance in the local government structure in Zanzibar i.e. a neighbourhood.

The Isles: refers to the Islands of Unguja and Pemba making up the semi autonomous state of Zanzibar.

Poet's note

Chinwe Azubuike

It is an honour to be here, though not physically, but spiritually I feel myself amongst you all through my poems. And I hope that the purpose for which I have had to share these poems with you opens an avenue for us all to seek right from wrong, and start a chain reaction in the fair treatment and justice for women in Africa.

Chinwe Azubuike is a contemporary African Poet. She is regarded as a strong female contemporary voice from Africa, born in Lagos-Nigeria. Her origins are from Imo State and she is the first born of a family of five children. Her late father, Wisdom Azubuike served in the Biafran War and was married to Mary Azubuike, her mother. Her humble beginnings were a far cry from the literary educated class of poets- born into a relatively poor family. Over the past decade she has gradually crafted her own powerful voice and found a unique style of no-nonsense writing that comes directly from her heart. Recently she has participated in various writing groups throughout East London. Her literary development began whilst attending secondary school. She constantly viewed herself as a spokeswoman for Nigeria's deprived underclass and recognised within herself a strong sense of social justice. This is reflected in her poetry, as her work highlights the complicated issues and beauty of the people of Africa, especially the plight of women and children. The bulk of her work focus' on female issues; of love, life and torture with specific references to ethnic family traditions within West Africa. Her meteoric rise in African literary circles came about when she was invited to give a talk on female circumcision for the BBC World Service in 2004. Following on from that success she gave various readings at the Poetry Society in Betterton Place, London. She has spoken candidly on various radio stations in the Capital and her work has been published in various online publications and offline magazines in London and throughout the world. Presently, she is running a campaign worldwide for women, against the victimization and deprivation of human rights of "the Widow" in Nigeria. This issue is extremely personal to her as it is borne out of her own bitter experience when her father sadly passed away. She has written extensively on the subject with essays and poetry and intends to create a documentary in Nigeria about "Death of a Husband".

These two poems are part of my series I have been creating, growing up as a young girl in fighting the Victimization of Widows. This is an issue I have since developed a stronger interest in since loosing my father- however, I do not want this to sound very personal. My personal experience has precipitated my fight further for this course for all other women in Nigeria and Africa as a whole who have suffered this, and still going to suffer this injustice.

At the end of it all, I fight to see something done, and the thing I seek is this:

I seek a Legal framework that will protect women in their homes, communities, and states of Nigeria. A law that outlaws domestic violence and entitles them to own property and recognizes their right to inheritance. I want a Parliament that will adopt and pass on an Act.

An act that addresses archaic traditional inequalities women have faced in family relations, inheritance and ownership, bringing customary law and the constitution into closer alignment with international human rights standards.

The Act should be seen as a leap forward in regards to women's long walk to freedom.

Onwu Di

Chinwe Azubuike

She dies and...

'Oh! Take heart'

'May God comfort you'

'It's one of those things'

He dies and it's...

'Aahh!!!' 'She has done her worst!'

'Ajoo Nwanyi!'

'Amuusuu!'

On sick bed,

On wheels,

Beneath the sea,

In the air,

'She was the cause!!!'

They always say.

The other people lament

'What rubbish!'

'Such injustice!!'

But to deaf ears they fall.

They come in troops

Lazy bones in disguise

To reap where they sowed not in the name of kinship.

Day by day they saunter in, to cast your lot

And at times, battle over the remnants

Like vultures to the carcass.

Di,

Stand up!

Get up from your eternal slumber and show us your slayer

For your home is falling apart.

Your kinsmen have ravaged your house.

Your wife has become a barbarian

Made to drink the juice of your corpse

Stripped of her beauty by her skinned head

Ruffled and tossed like a culprit.

They have sentenced her to a dozen months imprisonment
In the confines of your ancestral home.
They gave her white this time to cover her nakedness.
A change from the black that used to be the uniform
And until she completes her days,
The light of the sun she dares not see again
Nor witness the joys of the world.
And when that happens,
A second wife we fear she may become.

The other people lament again,
'What rubbish!'
'Such injustice!!'
Yet to deaf ears they still fall.

Your children, we know not their fate
Chased away from your cocoon
Scattered like sheep
Destitute we fear they shall become.

Di,
If you do not arise and prove the innocence of your wife,
Then your home we fear,
Is doomed forever.

Of Widowhood

Chinwe Azubuike

Blood shot eyes from endless stream of tears
Unfathomable thoughts of denial
Questionable words to celestial bodies and gods
Irrational musings aimed at nothing

The total stripping of aided beauty
The sudden chastity commanded and demanded
From the inside to the outside
Seeming endless days of incarceration

The constant haunting dreams
Presumed doubts of 'the' occurrence
The feared bullying from kin, unbecoming

The new vacuum in our hearts and beds
The registered absence-forever,
Of 'the other half'

The final acceptance of death's handiwork.

Post conflict recovery in Sierra Leone: the spiritual self and the transformational state

Sariane Leigh

“We need to get back to the old time mobilization of our grandmothers”, said Regina Amadi, Regional Director for Africa, of the International Labor Organization (ILO), May 8 at the 2009 African Women Changing the Global Outlook Empowerment Conference in Washington D.C. As she spoke before Somali intellectuals, Ugandan business women, Nigerian journalists, and Tanzanian political leaders, she and other global leaders shared their concerns about Africa’s political, economic and environmental and health condition. The British Embassy and National Geographic sponsored the conference by bringing together noted international panelists to respond to audience questions. While the usual suspects brought up age old hot topics such as good governance, the role of Ngo’s, and male political power structures, participants challenged female panel members on what they are doing to empower those who do not have the privilege to attend the conference. American Journalist, Makeda Crane asked, “What are we doing NOW to help the women in the Congo?” Makeda’s overarching question brought to light the complicated tier of injustices that make women’s goal to “help” and “improve” Africa a task bound by time, space, and resources.

What are women doing “now”? The journalist’s urgent demand for change in the Congo is not the first and likely not the last time the international community has called for an intervention on behalf those who cannot seemingly fend for themselves. But what about the women who are fending for themselves while waiting for high powered intellectuals to lobby for an action plan. How do we understand the emotional resources and coping skills of women staring into the face of immediate danger? Ten years ago, in Sierra Leone, the

world faced the same challenges as a civil war resulted in violent and humiliating acts along the countryside of Kenema and into the city of Freetown. The devastations were massive, unpredictable and in most cases unpreventable by even well-equipped European military fleets. In the context of conflict and trauma, immediacy is a haunting fog that forces one to think and act in survival mode. While organizations descended to assist villages and communities with their most pressing needs, the women who survived the ten-year ordeal were forced to address their emotional state with the resources that were readily available.

Immediate Healing and Long Term Recovery

This impulsivity for immediate action comes at a historical nexus for rebuilding in Rwanda and Sierra Leone while overlapping with the political unrest in Congo-Kinshasa, the Sudan, and Zimbabwe. We know that women are simultaneously recovering while others are living through unspeakable crimes. We know that they go on to forgive, forget or suppress what they have witnessed. However, what curiously reoccurs in women’s war testimonies are references to spirituality. Sierra Leonean women’s use of spirituality offers psychological clues as to how women continue to press forward and emotionally sustain themselves in the face of trauma. Spirituality aids in women’s ability to transcend their immediate experience and redefine themselves, creating a new world based on a self-tested transformation. Women uphold spiritual relationships as a core component for managing their emotional recovery. Women use spirituality as a self-affirming, personal, and private vehicle for recuperation in areas where organized religion can not sufficiently address the deep interpersonal areas of their lives. Spirituality functions as a regenerative force for individual empowerment by offering the individual an internal source of hope to overcome difficult circum-

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stances. By first developing herself, a woman can then take her strength to catalyze others in similar situations. Spirituality as a healing mechanism is not a new concept. However, spirituality as a tool for African women's "self then state" transformation is an under-explored topic of post-conflict gender studies.

Me, then We

Western psychology focuses on treating trauma within the frameworks of Post Traumatic Stress Disorder (PTSD) emphasizing individualism and self reliance¹. Though post conflict nations such as Sierra Leone have collectivist attributes, collectivist psychological assumptions ignore the dichotomous nature of individualism and collectivism during traumatic recovery. Individualistic recovery is not limited to a western theoretical psychological outlook. Woman, as an individual in a post conflict setting often are socially mandated to sustain communal relationships. Women are the first ones expected to forgive the sons, brothers, fathers and husbands who carried out heinous crimes. These same women create self-development tools to remind themselves of their purpose and a connection to the "whole". Gendered spirituality serves as a core component in the overall communities' capacity to recover and transform after extreme trauma. Anthropologist Dr. Chris Coulter's (2008)² reflects upon witnessing a Kuranko girl's initiation ceremony three years after Sierra Leone's peace declaration. She ultimately concludes that the gendered ceremony is an opportunity for the Kuranko to reinstitute normalcy. Coulter says,

"The social significance of the ritual is particularly emphasized; the ceremony is not only a social event but has become a key event in reconfiguring social relations after a decade of civil war."



Phumi Mtetwa (South Africa/Ecuador).
Fundación de Acción, Estudios y Participación Social, FEDAEPS; Coordinator of The International Network LGBT South-South Dialogue and Represent of the SSD in the International Council of the World Social Forum.

(433)

Similarly, University of Sierra Leone's Dr. Aisha Fofana Ibrahim's (2006)³ research revealed that most of the women she contacted participated in or desired some form of cleansing ceremony, because rituals are "an important catharsis",

"In Sierra Leone, cleansing ceremonies can last from a day to a month depending on the physical and emotional state of the person seeking a "cure" and the amount of money they can afford to spend. Such ceremonies often include ritual baths in which people are bathed by herbalists with a mixture of herbs and then given herbal and/or lasmami potions to drink. Lasmami is a kind of holy water made in two different ways. A wooden slate inscribed with a specific Quranic verse is hung over a container then washed clean or pieces of paper with the Quranic inscriptions are soaked in the water- the water collected in these processes is what is called. Lasmami. (Fofana 188)

More so, in a post-colonial, post conflict atmosphere, women's spiritual self-care alludes to a larger national liberation and transformation movement that demands her participation in a self-reflective process in order to move the nation toward healing. Dr. Philomena Okeke-Ihejirika (2008)⁴ credits spirituality as source of stability amidst the rise of rapid global movements requiring that people

hold onto to something steadfast and reliable.

"Movements of spiritual revival have become global phenomena in response to the contemporary ontological insecurity fostered by rapid shifts, uncertainties and extreme fluidity" (87)

What appears as a spiritual "revival" also represents

an external manifestation of women's inner orientation toward transformation giving birth to a new post-conflict social movement.

Rhetoric and Politics of Recovery

Social healing during and after post - conflict arise out of an individual's will to inflict change functions as form of recovery that taps into longing for connectedness in a fractured community. However, a forced social healing program urging communities to recover so the nation can "move on" undermines the inner work that must happen first. The rhetoric of post conflict recovery in Africa is often painted with a broad brush of reconciliation, forgiveness and national healing. These concepts appear abstract in the face of most women's immediate reality. Her life is lumped together with overall national healing. Her personal experiences are simply one of many who survived to tell their story. Religious leaders are complicit in this umbrella approach by promoting healing in a package of confession and apology performances. Should these techniques automatically act as a catalyst for healing across all countries and conflicts? [Dr. John Hatch's essay \(2006\)](#)⁵ on religion and reconciliation in South Africa rightly criticizes how formal religion pollutes recovery because of its unregulated influence in politics.

The South African experience lends some credence to the claim that reconciliation's praxis problematizes walls of separation between religion and politics – and brings them into dialogue.” (1)

Hatch's assessment of reconciliation highlights the blurred lines of religion and politics. Here collective healing trumps individual recovery. Women's personal transformation challenges the definition of recovery and healing by circumventing traditional patriarchal spiritual guidelines.

Prescribed Healing and Personal Recuperation

Like South Africa, Sierra Leone's reconciliation process was put in place under the hands of religious leaders and political enforcement. For example, during Sierra Leone's truth commission, participants were urged to "forgive the rebels" (Schroven 17).⁶ Recovery and healing are more than a harmonious prescribed notion of forgiveness. Recovery and healing operate on a spectrum of living conditions that make life easier for women. Again the outsider's gaze and longing for immediate recovery is bound in its own form of neocolonialism. Expecting a community to recuperate via force in a government mandated healing process suppresses the true healing work and pushes recovery further away from the nation's grasp. Women out of post-conflict nations are moving away from the controlled psychological healing by designing personal pathways toward emotional recovery. Women's transformation occurs at multiple points along the continuum of trauma. Personal transformation within this socio-cultural context indicates that women are positioned to change their well-being by using their personal networks and resources. Transformation as a spiritual ideology symbolizes the power and plasticity of spiritual beliefs as an easily accessible tool for coping and recovery.



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Spirituality alone does not adequately answer how women recover. Spirituality is still mired in patriarchy and gender roles that limit an introspective process toward self- transformation and self re-connection. Yet, when one asks what can we do now, we must also ask what are women living in conflict doing now for themselves? We must always consider how they resolve their own problems and what resources they access to do so. As we in the west draft our action plans and brainstorm for solutions, we must be mindful of the dy-

namic psycho-spiritual process that each woman must experience in order to rebuild. If we expect our well thought out plans to take root, we need to learn more about the psychological evolutions that are currently underway. Who are the new generation of women who grew up only knowing a country of conflict, how do they rationalize their self in relation to the state? Can Regina Amadi's theoretical recommendation to follow the "way of our grandmothers" address the multi-layered challenges of a new era of the self-empowered, self transformed "African Woman"? These questions can only be answered by positioning women to speak for themselves in spaces that can mindfully transform their thoughts into action. As new global female leaders emerge out of Africa, we must not forgo individual development with hopes of a mass healing movement. Post-conflict nations are entering a new era of identity. Women's individual and collective psychosocial state are critical to long term stability and set the rhythm to which the country will march. Spirituality is currently operating in the places where think tanks, political leaders, non-profit organizations cannot... the inner working of women's will and commitment to herself and thus the state.

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To be a woman in Kenya: a look at sexual and gender-based violence

Ann Njogu &
Michelle McHardy

In 2006, the Centre for Rights Education and Awareness (CREAW) – a non-governmental organization promoting gender equality and justice through the empowerment of women and elimination of discrimination and violence – took on the case of a woman who was brutally attacked while waiting for a bus at the country's capital, Nairobi. She was dragged behind a bush and gang raped by 10 men for several hours. Later, in the public hospital, she was asked by the attending doctor (who said that he did not have gloves) to insert her fingers into her vagina and remove the semen with her own fingers and place it on the doctor's laboratory slab for examination.¹ Still ashamed, embarrassed, and sore from the attack, this completely inappropriate act by the doctor violated

1. Ann Njogu, personal interview, 29 May 2009

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her all over again. It was as if she was attacked twice in one night.

Now in 2009, three years later, despite the Sexual Offences Act having been passed into law, similar stories are still being heard. A rape survivor, having actually won her court case against her attacker, found herself back in court on an appeal by the convicted perpetrator who she had positively identified, and who had been convicted on the basis of all the compelling evidence that was adduced in the lower court. The High Court Judge, Justice Makhandia sitting in court in Nyeri, quashed the conviction on the basis that since she had neither told her mother, teachers or to her church leaders, of her rape ordeal, it was unlikely that she had been raped as alleged. This in spite of the incontrovertible medical evidence and witness testimonies, including her report to the police that she had been raped and the basis upon which the lower court had found the perpetrator guilty of the charge of rape.² Just like the previous incident, this woman was violated twice – only this time it was once by her rapist and once by the court of “justice”.³

2. As reported in the Daily Nation, 24th February, 2007

3. Just this week, (June, 20 2009), a lady in the company of one prominent personality, was taken through a gruesome ordeal of intimidation, coercion, violation and abuse. According to reports in the press, the Prominent personality was car jacked and the thugs shot him, took off with the young woman, who was allegedly raped before being abandoned in yet another stolen vehicle. She went to report the incident to the police and was promptly arrested, kept in police custody for days, denied medical treatment within the mandatory 72 hours for the Post Exposure Prophylaxis (PEP). The women's movement in following through this case with the government agents including the police demanded to know what offence the lady was being held for and owing to the immense pressure from the women advocates, she was taken to the Gender Violence Recovery Centre (GVRC) where she denied ever having been raped, violated, or ever having been in the presence of the prominent personality. Worse still she denied that she had

Are these isolated instances of violation, trivialization of sexual violence by duty bearers in the country and or what then is the prevalence of sexual violence in the country? Have attitudes necessarily changed since the enactment of the Sexual Offences Act or are we still a country in denial?

The recent upheaval in response to the national sex boycott called by the G 10 women's movement placed this issue in the spotlight. The women's movement under the banner of the Gender 10 (G10), recently led a seven day sex boycott across Kenya demanding an accountable, responsible and issue driven leadership from the grand coalition partners in government – namely the President and his Prime minister.⁴ According to the G10, the clear lack of leadership by the two was unacceptable in a country that barely survived the post election crisis and violence in post 2007, a country struggling to deal with severe famine, extra-judicial killings, Vigilante mass killings and insecurity, assassinations of human rights defenders, attempts by the government to control the media, land feuds, and high crime rates. The G10 therefore called for the Sex Boycott as a means of not only calling for the entire country's reflection into the leadership crisis, but to also re-focus the country's leadership on the critical issues facing the Nation. This action was not

only successful in gaining awareness about problems within the executive, in parliament and in society but also in getting the two principals and their cabinet to sit down and discuss the issues raised, it was also suc-

ever been arrested. She was then whisked away under heavy police security and only released from custody the following day and asked to leave town. To date, no one knows if indeed she received medical assistance and or her whereabouts!

4. Bornice Biomndo, "Women Now Turn the Heat on Politicians," *Daily Nation* (29 April 2009)

cessful in raising awareness about women's rights.

Once the ban was launched, it was incredible to observe the most chauvinistic statements from some who categorically stated that women had no business saying no over matters of their own sexuality. Some even threatened to beat up their wives into sexual submission; others said that sex was a taboo issue in Africa and must not be discussed in the open- this despite the wanton rapes, defilements and HIV prevalence in the country. Some groups were also mobilized by politicians to condemn the sex boycott while journalists

in some leading media houses called the members of the G10 some unpalatable names and wrote extremely demeaning articles⁵.

However, there were also very incredible and powerful articles and debates on all media, amongst people from all tribes, background, diversity, in schools, in churches and on the streets on this issue that brought out questions of marital rape, gender based violence, women's position in society, and even those that brought home the concepts of the "Personal being Political".

Despite the operationalization of the Sexual Offences Act – an act that provides the strictest penalties for sexual offences in Kenya's history – the level of violence against women is still very prevalent if not on the rise. While the passage of the Act

was a major milestone, several issues require urgent attention. One such issue is the glaring inclusion of Sec. 38 of the Act that states that if one reports a crime of rape, and the perpetrator is found not guilty by the court, then such a person would be liable for malicious prosecution and once found guilty would serve a court sentence equivalent to the sentence the perpetrator would have served if he had been found guilty by the said court. Kenya becomes the only country in the world, where a victim of rape could end up being

5. A collection of articles available on request.



Ayaan Ali Hirsi (Kenya/Somalia)
Human Rights Activist - Somalia Girls Human Empowerment

a criminal serving a sentence issued by a court of justice. The most ridiculous part of this law is that, the victims of such crime as rape are not in charge of any part of the criminal justice system, yet a very heavy responsibility and burden is placed on their shoulders by the same law that ought to be their shield and defender. This proviso thus acts as barrier for victims of rape to seek access to justice for fear of prosecution.

Continued resistance from the government to pass legislation and policies that protect and secure the place of women and the clear lack of enforcement and or political will has greatly hindered the efforts to protect the women and children of Kenya. The police department has yet to customize their stations to accommodate sexual violence victims and many times those who go to report a crime turned away.⁶ In addition, the government has not only refused to domesticate international law, such as ratification of the African Union's Protocol on the Rights of Women in Africa, but has greatly procrastinated in the creation of their own legislation. There are several very important bills fundamental to the fight against gender-related injustices, known as the "Gender Bills", including the Domestic Violence Bill (a.k.a. Family Protection Bill), Equal Opportunities Bill, Marriage Bill, and the Matrimonial Property Bill that have yet to be passed – some of which have been pending since 2001 for enactment. These behaviors are evidence of a government and legislature that is not committed to combatting SGBV, women's rights and protecting its citizens.

The height of all these inequalities and injustices was experienced during the post-election violence that occurred in 2007-2008 after the legitimacy of the presidential elections result was highly disputed. With the incumbent administration and opposition party failing to reach an agreement over the stolen election, the country plunged into absolute mayhem. Divisions along political lines began to emphasize divisions along cultural lines, and a form of ethnic cleansing began to take place, pushing the country to the brink of civil war. Thousands of people were killed and hundreds of thousands were injured and/or displaced. Women and girls paid the highest price for a failed government and faced a significantly increased risk of physical and sexual violence and sexual attacks. Gang rape, forced marriage to enemy soldiers, sexual slavery, and forced mutilation were commonplace and

6. George Ochich and Ekuru Aukot, 2008 *Human Rights Report* (Nairobi: The Law Society of Kenya, 2008), 6.

most survivors did not have access to adequate medical care or nay care or at all. According to the Gender Violence Recovery Centre in Nairobi, a total of 650 survivors of sexual and gender-based violence (SGBV) related to the crisis were treated, with nearly 450 being seen in a short period of two months immediately after the election.⁷ These numbers, as shocking as they are, merely represent statistics from one hospital in Nairobi and consist only of those that were actually reported to this hospital at the time of the said crisis. More than a year has passed since the destructive uproar of the post-election violence ripped the country apart – we still have internally displaced persons in the camps.

SGBV includes such acts as, rape and defilement, wife inheritance, dowry-related violence, domestic abuse, and female genital mutilation (FGM), and all of these violations are still rampant throughout the country today. A woman recalls how she was brutally attacked in her own home during the crisis :

They accused my husband of being a traitor, and they dragged the two of us out of the house. They then took us to the forest and raped me for days, taking it in turns and saying that I would pay the price on behalf of my husband, forgetting that they had already killed him. He was beheaded as I watched, and they buried him.⁸

While this story is particularly brutal, women across the country continue to fear violence everyday and feel as if they have no control over what happens to them or to their bodies. It is estimated that a woman in Kenya is sexually violated every 30 minutes, with survivors ranging in age from 5 months to 82 years⁹. In Kuria district alone, more than 200 girls are forced to undergo circumcision (Female Genital Mutilation) everyday.¹⁰ The sexual, economic and social inequali-

7. CREAM, *Women Paid the Price!!! Sexual and Gender-based Violence in the 2007 Post-election Conflict in Kenya* (Nairobi: CREAM, 2008), 3-5.

8. "Kenya: Battle for Land Fought Over Women's Bodies," IRIN News (17 December 2008), <http://www.irinnews.org/Report.aspx?ReportId=81998>

9. George Ochich and Ekuru Aukot, 2008 *Human Rights Report* (Nairobi: The Law Society of Kenya, 2008), 10.

10. "Girls Flee Circumcision in Kenya," BBC News (5 December 2009), <http://news.bbc.co.uk/2/hi/africa/7766806.stm>

ties that exist in Kenya have come to be somewhat accepted and even seen as normal. Today, violence is seen as an acceptable way of disciplining women and maintaining a sense of order and control in the household, especially when a woman refuses sex, disobeys orders, or asks questions considered to be none of their concern, such as family finances.

SGBV has become deeply entrenched in Kenyan culture through rites and traditions that are not only physically and psychologically harmful, but instill the perception that women are objects to be used, abused, or misused. Bride price and wife inheritance are two such traditions that perpetuate these beliefs and contribute to increased rates of marital rape, domestic violence, and the overall poor economic status of women. A woman tells such a story:

My brother in-law, who inherited me after the death of my husband, would come home late at night very drunk and demand sex...I had a friend who refused to be inherited and was forced out of the home with her children. She never returned and she died and suffered the ultimate insult of being denied burial in her home village. I did not want to subject myself and my children to such extremes.¹¹

Sadly, due to social stigma, fear of reprisal, ignorance of the law and one's rights, insensitive medical procedures, inefficient judiciary, and stigma associated with most crimes against the person, very few cases are officially reported and even fewer are successfully tried in court. Feeling trapped and often helpless, women feel as if they have nowhere to turn and often suffer in silence.

The expounding nature of patriarchal ideology has not only consumed the majority of households in Kenya (95% of all land in Kenya is owned by men¹²), but has also reached other basic institutions, making it difficult to push for the protection of the rights women deserve. With women holding less than 9% of the parliamentary seats, they are often belittled and insulted, such as when fellow MPs declare on national television that when women say "no" they actually mean

11. CREAM, *Wife Inheritance: A Death Sentence Behind the Mask of Culture* (Nairobi: CREAM, 2008), 25.

12. *Kenya Women's Manifesto* (Nairobi: Friedrich Ebert Stiftung and The League of Kenya Women Voters, n.d.), 17.

"yes".¹³ With current legislation acting as a "window-dressing", the fact that things on the ground and in the courts are really no better than they were three years ago is overlooked. Women need to be placed in positions of power and have a direct hand in instituting reforms.

Although the situation in Kenya may seem dire and overwhelming, Kenyan women have not given up hope. Taking the Swahili saying "*Msilale wanawake*" (Women - do not fall asleep) to heart, women are "waking up" and taking a stand. They are banding together in record numbers and continuing to increase public awareness and advocate for change. Movements like the G10 that seek to re-define the political space and put people at the centre of leadership are gathering momentum. While it is important that change come from within Kenya and be implemented with the unique Kenyan dynamics in mind, continued international support for Kenyan women's efforts and international pressure on the government to combat SGBV and other social ills is critical. The path to a free life in which everyone's rights are respected and protected is a long and difficult one, but the women of Kenya are committed to making sexual and gender-based violence a thing of the past.

13. Joyce Mulama, "RIGHTS: Kenya's Parliament Hears That Women Who Say 'No' Often Mean 'Yes'," IPS News (27 April 2009), <http://ipsnews.net/news.asp?idnews=33033>

Trans-hate at the core of gender based violence?

Liesl Theron

Gender DynamiX is a human rights organisation, the only in South Africa focussing its work on the transgender, transsexual and gender non-conforming sector. The organisation was originally founded to work on a referring database system, collecting and archiving information from and about transgender people by transgender people to disseminate useful information (on request to other transgender people). Stealth living is in many trans¹ people in South Africa's viewpoint the ultimate goal, hence the lack of information and silence around the prevalence and visibility of transgender role models. What was initially seen as the goal of Gender DynamiX was quickly exceeded and we were contacted by trans people from all areas in the country, indicating a much greater need than collecting and disseminating information. Soon after its inception Gender DynamiX initiated workshops, seminars, participated in the larger LGBTI sector in activ-

1. I use the word trans freely in my writing, indicating and respecting trans includes transgender, transsexual, transvestite and gender non-conforming.

Liesl Theron is the founder of Gender DynamiX, a human rights organisation promoting freedom of expression of gender identity, focussing on transgender, transsexual and gender non-conforming persons. Being a gender activist she is actively involved in the organised LGBT sector of South Africa. Her work focuses on the intersectionality of gender and Other bodies. Her research as part of her Honours degree at the University of Cape Town explores the struggles, support and forming of identity of SOFFA's (Significant Others, family, Friends and Allies) of trans people.

She was selected by the [African Regional Sexuality Resource Centre \(ARSRC\)](#) based in Lagos, Nigeria for the 4th annual [Sexuality Leadership Development Fellowship](#) in July 2007, which included post-fellowship research. Her chosen research topic, *[Un]accessible shelters for LGT people in Cape Town* was, completed in December 2007 and was accepted by the Resource Centre for publication later this year (2009).

ism and contributed to the local and regional 'pool of knowledge' about transgender, transsexual and gender non-conforming information. Most importantly Gender DynamiX hosts a very informative website which serves in many trans people's lives as the first touch point to obtain information about medical and legal procedures.

South Africa is internationally acclaimed for its progressive constitution when it enshrined sexual orientation in it's' constitution in 1996. Many other important rights were celebrated for gay and lesbian people such as same-sex adoption rights and joint beneficiary on medical schemes and policies. South Africa became the fifth country in the world to celebrate same-sex marriages.

All these liberal and progressive rights are acknowledged amidst an undertone of extreme violence against women, minority groups and LGBTI² people. One in three South African women can expect to be raped in her lifetime - at least once. (Moffett, 2009) In documents and research reports one reads that a woman in South Africa is raped every 20 seconds. Vanessa Ludwig opened her keynote address at a fundraiser event (in aid to the End Hate³ campaign) in March 2008 with a very dramatic but high impact message. She stood in front of the microphone in silence for a few minutes, with a spotlight on her and a djembe⁴ drum

2. Most LGB(TI) organisations in South Africa claim they are LGBTI organisations, serving lesbian, gay, bisexual, transgender and intersex people and their needs. According to Gender DynamiX a very small number of those organisations cater adequately (or at all) for trans and intersex people to the level of information and services they need.

3. The End Hate campaign focuses on hate crimes against LGBTI people

4. African drum.

beating every 20 seconds. After working up to a point where one started to feel very uncomfortable, her first words to the audience were: 'Each time you hear the drum, another woman is being raped' and challenged the audience to shift their discomfort to anger.

We hear these shocking and powerful speeches, according to the numerous research reports from credible organisations such as the Medical Research Council, the Human Sciences Research Council and many more (Moffett, 2009) echoing the same astounding statistics.

In post apartheid South Africa with its freedom of speech more powerful presentations, NGO's mobilizing constituencies, ongoing workshops and awareness raising, campaigns such as the *One-in-Nine*, the *Rose has Thorns Campaign*, *Take the Night Back*, *16 Days of Activism*, *070707 Campaign* and many more events encourage women to 'come out'⁵. This has led to building a momentum where women initially courageously told their stories. Kwezi⁶, a HIV activist, felt no different in laying charges when she was raped. She exercised her (well informed) constitutional right. The justice she was hoping for turned on her. The system failed her dismally as she was silenced and, for her own safety, she now lives outside South Africa in exile. She does not feel safe in her own democratic country with all its newly gained freedom anymore. Was it because she challenged in court the same Jacob Zuma, who is now our President? The situation Kwezi finds herself in illuminates the 'victim who became victimized' discourse. As Moffett states: 'The 2006 rape trial of Jacob Zuma⁷... provided a clear demonstration of the shortfall between the rights women are guaranteed under the 1996 Constitution and the cultural, political, judicial and social backlash women risk should they lay claim to these rights'.

Illuminated above are clearly contradictions to the rights women are able to exercise and claim in South Africa against the rights written in the constitution. LGBTI people experience similar contradictions be-

5. 'Coming out' regarding HIV status, rape or being lesbian.

6. Her pseudonym throughout the rape trial and since, to protect her identity

7. Since the rape trial in 2006 Jacob Zuma was voted in to become South Africa's 3rd president since Democracy, April 2009.

tween written law and experienced life. Trans people find themselves even more on the fringe, rejected to a very isolated space on the far side of the boundaries of society where they are many times rejected from 'mainstream' society, yet not included in LGBTI groups or settings. Similar to how many lesbian and gay people's lived experience is in contradiction with our constitution, trans people find themselves in a liminal space where they are not included in heterosexual or homosexual spaces, and prejudiced against – yet our constitution makes provision for everyone in the *Rainbow Nation*.

On the evening of 2 June 2008 Daisy Dube, who proudly self identified as a drag queen was shot and died on the scene. A close friend, who was out the evening with Daisy confirmed the motivation for the killing was their gender identity and that they were not willing to subject themselves to ridicule. The shooting resulted after Daisy and her three friends challenged three homophobic men to refrain from calling them 'isitabane'⁸.

Not all hate crimes and gender based violence against transgender people results in murder. Not all hate crimes and gender based violence against transgender people in South Africa are reported. Many fear secondary victimisation from the police. A trans woman who was raped by a gang of six guys said she could not report the case at the police due to her fear of the police and the terrible things she heard about the police. Not only is police response humiliating, it is also extremely traumatic (Reid and Dirsuweit, 2009).

Another trans woman was in a house where the police performed a random drug raid, in July 2008. All the house mates were taken to the police station and upon being discovered as transsexual she was kept in the holding cells much longer than the others. She was 'body searched' by just about every police officer in the station and she also mentioned assault. She was never found guilty of drugs nor was any charge made against her. In 2007 an intersex woman was taken into a police station for a traffic offence. She was being body searched by every police officer in the station, assaulted and ended up with bruises. She reported the incident to Gender DynamiX; she did not want to lay a charge, neither wanted counselling as she said she just

8. Originally from the isiZulu term 'isitabane' which means hermaphrodite and is usually used in a derogatory way to refer to LGBT people in townships.

want to block out the ordeal.

Trans people also suffer abuse and violence at the hand of family members, due to their trans identity. One trans woman related how her dad and other male family members raped and assaulted her repeatedly in her early childhood as result of her 'effeminate behaviour' and called her moffie⁹. She was also forced to perform sexual acts with a dog to 'teach her a lesson'.

One trans woman told of a series of incidents which started four months after her gender reassignment surgery. Her house burnt down one night, while she was asleep inside, she fortunately woke up in time to save her own life, but the house burnt completely to the ground. Two months later her business was petrol-bombed and six months after that she was assaulted with a pick handle by her ex wife's lover. She suspected all these attempts on her life came from them.

25 December 2007 a trans woman reported she wanted to commit suicide as a result of rejection by her community and family. She was severely beaten up by her (then) wife's family members. At that stage doctors feared that she has lost partial eyesight in her right eye due to damage to her face.

Bullying and teasing at school is something many trans people can relate to. In some cases trans people told me teachers would 'join in' ridiculing them for the way they present themselves. One trans woman referred to an incident where a group of boys assaulted her one afternoon after school in the cloak rooms. Incidents like this lead to depression and underperformance. Many trans youth drop out from school at a young age due to intimidation, ridicule and ostracising.

Partners of transgender persons are also subject to transphobic violence and are equally vulnerable, yet are in some cases more invisible. Inasmuch as adequate statistics, information, structures and support for victims of gender based violence are not in existence in South Africa, for lesbian, gay and transgender people, it is even more premature to ask if partners or any SOFFA¹⁰ of transgender people will be recognised

9. Moffie – An Afrikaans derogatory term for a gay male that has been borrowed into South African English. Similar to the English equivalent 'faggot', first used as a derogatory term and now in the process of being reclaimed in certain communities.

10. Significant Other, Family, Friends and Allies.

and supported, or being counted in transphobic violent acts in hate crime statistics (Cook-Daniels, 2007).

Prevalence of gender based violence amongst any community is harmful. Many incidents in our recent past can be described in the words of Antje Schuhmann as 'violent statements of claiming control over women's bodies and their right of expression.' (2009). I want to argue that the violence that gays, lesbians and women in general face are mostly gender based and not sexual orientation based. The transgender community are directly exposed to this threat because of gender non-conformance¹¹ or cross gender behaviour and expression. It is therefore essential to advocate against this evil and to fight for the protection and rights of all citizens and especially so for LGBTI individuals.

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11. Taking for example the woman from Umlazi who was stripped naked and men in the village burned her shack down – because she was wearing trousers. She was not a lesbian. This form of oppression took place because she was not conforming to cultural expected norms.

Manhood, violence and coercive sexualities in men's prisons: dynamics and consequences behind bars and beyond

Sasha Gear

Over the last few years the CSVr in Johannesburg has conducted research on sexual violence in men's prisons. One striking feature of this work, which initially jolted my assumptions, has been the relative readiness of perpetrators of male same-sex rape in prison to report this violence to us as compared to the bashfulness of victims.

It's the context of the situation where perpetrators seem more willing to talk about their violence than victims - that I'll consider in this article, showing how it is actually well explained by the social place that sexual violence occupies in prison. This focus which has pertinence far beyond prison walls as well, sheds light on particular notions of gender and sexuality and their relations to violence.

The ways in which sexual violence in men's prisons is

Sasha Gear works at the Centre for the Study of Violence in Johannesburg where she was first involved in researching ex-combatants' experiences of transitional South Africa. Since late 2001 she has coordinated the Sexual Violence in Prison Project, producing qualitative and quantitative research to gain understanding on the nature and circumstances of sexual violence and coercion happening in men's prisons. In addition she is involved in awareness-raising and capacity-building initiatives for prison staff and others working in prison to promote sexual health and to develop strategies to prevent and respond to sexual violence behind bars. She has published on the ways in which violence plays out in the socio-cultural world of prisons and on the gendered dimensions of male rape. Her primary interest is in masculinities and how different understandings of manhood feed into and shape experiences of violence. sgear@csvr.

This is a shortened version of a presentation given at the Sexual Violence Research Initiative (SVRI) Forum, July 2009 in Johannesburg.

understood and lived is largely framed by dominant inmate culture - the behaviours and understandings considered normal in that context and which are upheld by those wielding most power. Sexual violence in prison is interwoven into the workings of dominant inmate culture, which in South Africa is strongly influenced by prison gangsterism. So for example, sexual violence is structured into gang hierarchies and features in the classification processes of new members into these hierarchies. But while it is so embedded in this culture, the many ways in which the culture normalizes this violence, simultaneously make it invisible.

One way in which this happens is that parties in the violence are conceptually disappeared. Male victims of prison sexual violence are no longer even acknowledged as men, but are commonly believed to have been turned into "women". In the words of one of our respondents,

"If ... sex [is done to you], ... you are now a woman ... There is nothing we can do ... and we don't care ... When [you] walk past people want to touch [you] or threaten to rape [you]."

Another aspect of this is that sexual violence is normalized through forced partnerings which are often referred to as prison "marriages". The majority of rape victims end up being taken as "wives" or "wyfies" in forced marriage relationships by the perpetrators, whom the dominant inmate culture identify as "men". In these forced marriages the wyfies (who have had the feminized identity imposed on them) are seen as the means to the "men's" sexual gratification and, in the vast majority of cases, "marriages" become the place of ongoing sexual abuse.

While “marriages” are abruptly and brutally brought about through rape, in more than a few ways they also mimic the dominant heterosexual marriages that we’re all familiar with in dominant heterosexual relations outside. This resemblance is regularly drawn on to legitimize them, with inmates saying things like, “But prison wives are treated just like women outside”. Ultimately “marriages” smooth over the anxiety-provoking issue of violence by disappearing its protagonists: they turn victims into “wives” and perpetrators into “men”.

In contrast, other powerful and prevalent discourses bring very specific unwanted attention on the victim, blaming him for what has happened to him and building the perception that rape is the victim’s fault and the perpetrator has done nothing wrong.

While in these ways, sexual violence is minimized and obscured at the same time that there’s a profound stigmatization of victims, in contrast other forms of violence in prison are seen as central to establishing identities that are desirable and validated in inmate culture. The meaning of “manhood” in prison relies on an ability both to use and withstand violence (along with qualities like manipulation skills and self-sufficiency.) Violence is so wrapped up with “manhood” that if someone who has been made into a “woman” wants to escape the abuse and be promoted to “manhood” he’ll have to commit violence to prove his worthiness.

This way in which different forms of violence function to establish different gendered identities strongly resonates with Whitehead’s (2005) analysis of masculinity and violence. He identifies two categories of violence employed by men (in contexts of “masculine anxiety”) to assert manhood amongst their peers. The first which relates to the reliance of the notion of prison

manhood on particular forms of violence, is violence that supports the masculinity of both men in that it’s seen as men fighting against each other (they’re viewed as “worthy rivals”). But the second, which regularly involves sexual humiliation, is violence which functions to exclude victims from the category “man”. To become victim of this sort of violence is seen as a signal that one is unworthy of a masculine status, turning him into a “non-man” (Whitehead, 2005, p411). Male rape in prison, seen as destroying the victims masculinity while endorsing that of the perpetrator, is clearly an example of such violence.



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In the fundamentally misogynist environment of the prison, the feminine status imposed on victims represents the demolition of respect and identity amongst peers. The notion that ‘real men’ cannot be raped – and that if they were real men they would have managed to fight off attackers is widespread in society generally. So there’s very minimal if any room in prevalent understandings of masculinity for experiences of victimization amongst men.

Regarding the official states of affairs, practices of the Department of Correctional Services (DCS), like the dominant inmate culture make prison rape invisible. Quite literally rape is disappeared in the prison records of violence where there’s no category of rape / sexual assault. So if someone is raped, this is captured under the general category of “assault”. The policies also do not state just what it is and what is not allowed regarding sex and sexual violence. This leads to much confusion and ultimately assists in keeping sexual violence hidden for not naming it for what it is – at the same time that it contributes to homophobia. DCS’s lack of services and capacity to deal with sexual violence mirrors this absence. The official systems then, like the inmate culture, provide no space for male rape victims.

It's also pertinent to consider an emerging discourse which tries to oppose these dominant currents. It's employed by some activists attempting to address the situation and to get recognition for victims of prison rape. In doing so they've highlighted the potential for male rape victims to themselves become violent in the future. So, in its bluntest form, a regularly stated argument is that unless we pay victims the attention they deserve, they will become rapists on the outside in attempt to regain their manhood.

But it's certainly not a given that aggression and violence follow sexual victimization - and in terms of how prison rape may generate future violence, it seems noteworthy that in these well-intentioned discourses, the victims are singled out as potential perpetrators while those doing the raping and coercing - the prison "men" - are ignored (that's not to say that they're not sometimes the same people). It is however perhaps more likely that prison "men" will, on release, continue their abusive ways and in relation to 'outside' women as well.

There is certainly strategic mileage in this approach where it draws much-needed attention to male rape victims, but this argument can itself be damaging. By foregrounding victims as future rapists, activists risk stigmatizing them further. They get seen not as victims or survivors but as dangerous potential perpetrators, with the implied message being that we should pay prison rape victims attention to stop them from violating others and not because they're worthy of our attention simply because they've been harmed and violated.

Unintentionally, this sort of message leaves male victims as few options as they are offered by the brutal notions of "masculinity" which have such a hold on the inmate culture. These notions make recognition and respect conditional on a capacity for violence - and

the activist discourse ends up doing the same thing by saying the reason we need to pay them attention is the danger that they'll become violent. The vulnerability of men is an area that society apparently refuses to acknowledge unless we feel frightened by what our ongoing disregard may bring. Therefore, certain attempts to start addressing male vulnerability end up uncritically assuming automatic links between men and violence - and run the risk of endorsing the very beliefs we seek to debunk.



Mrs Djikne Hatouma Gokou (Mali)
Presidente, Union Malienne des Associations et
Comités de Femmes Handicapées

Prison represents a key socializing institution in South Africa like in many other countries with scores of our young men entering as well as exiting it everyday. The impact of prison experiences on those experiencing them is suggested in the findings of a survey we conducted in a youth correctional facility (Gear 2007). We asked the young men about different kinds of processes that they'd been through that they felt had turned them from boys into men. The emphasis was on their feelings, and they were told to include formal and informal processes, as well socially acceptable and frowned-upon processes where relevant. We found that as they'd spent longer in prison, processes that had taken place during their incarcerations became more and more of a feature. The periods of imprisonment were however relatively short. For example, amongst those who'd served 2 - 3 years of their sentences, 52

% had participated in processes inside prison which they felt had turned them from a boy into a man. At the same time, manhood processes taking place inside prison were having an impact even soon after inmates' arrivals - so they didn't have to be there long to have these formative experiences. Similarly, we found that they'd gotten much of what they knew about sex from their in-prison experiences.

Clearly prison experiences play a critical role in these

young inmates' sense of themselves as well as in their approaches to sexuality and gender.

Deeply destructive notions of what it means to be a "man" are entrenched in prison and include ones that see victims of prison sexual violence going unrecognized or receiving only stigmatized and humiliating attention while perpetrators go unchallenged and even garner respect as a result. But while these harmful ideas about manhood may be particularly exaggerated in prison, the discourses that support them are powerful outside prison as well. They are also the same ones feeding South Africa's extreme levels of gender based violence more broadly, solutions to which are only going to come about with the celebration of alternative ideas of manhood that do not link respect with violence. Fundamentally alternative notions of masculinity need also to acknowledge male vulnerability. These are two sides of the same masculinity coin.

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Denis Mukwege: caring for victims of sexual violence in the DRC

Kelly Morris

When Denis Mukwege was a young boy in what is now the Democratic Republic of Congo (DRC), he accompanied his father, a pastor, on visits to the community, especially to those who were sick. “One day, I asked why my father didn’t give a young child medicine as well as praying for him. My father answered ‘I am not a doctor’ so I thought I must take care of the medicine part”, Mukwege tells *The Lancet*. Now, Mukwege is internationally recognised for his work at the Panzi Hospital, Bukavu, in the South Kivu province of the DRC, which specialises in treatment for women who have been victims of sexual violence, throughout the years of conflict in the DRC and the continuing violence.

Last year, Mukwege was one of the winners of the UN Prize in the Field of Human Rights and was the first recipient of the “African of the Year” Prize, created by the *Nigerian Daily Trust* newspaper. On Jan 30, 2009, he received the Swedish Olof Palme Prize for his work, which “merits worldwide acknowledgement as an admirable example of what courage, persistency, and enduring hope may accomplish for human rights and dignity in times when these values seem the most distant”.

Mukwege’s hope to bring medicine and spiritual comfort to the people of the DRC began when he did medical training in Burundi and then worked at Lemera Hospital, in a rural area of the DRC. During this time, he saw many women who arrived after difficult labours, with profuse bleeding, or who had had unsuccessful deliveries and came to the hospital to die. Mukwege changed his intention to study paediatrics and went instead to Angers University Hospital, France, to train in obstetrics and gynaecology. There he met many mentors who inspired him. “The teachers who made the biggest impression combined humanity and

professionalism, with a focus on human values. Pure mechanical medicine scares me. When I see doctors combine professionalism with humanity they are really doing their job”, he says. Caring for the whole human being, he adds “is the most beautiful part of being a doctor”.

Dag Bohlin, international coordinator of PMU Interlife, a Swedish organisation owned by Pentecostal churches that support medical work in the DRC, told *The Lancet* that Mukwege “is a very humble man. He may be the most qualified doctor in the region but he never talks about his qualifications. He can talk to all kinds of people and doesn’t distance himself even from the poorest person. He wants to talk to everyone.” In Lemera Hospital, Bohlin recalls how Mukwege talked to everyone in the hospital. “How are you”, he would say. “What can we do for you today?”

In 1996, war began and soon seven armed forces were in conflict in the region. Lemera Hospital was destroyed and people fled. Mukwege eventually settled in Bukavu, the nearest urban area, as a displaced person. Bohlin recalls that Mukwege had wanted to establish a maternity hospital in Bukavu, since previously people there had had to travel 150 km to Lemera. In 1999, Panzi Hospital began work, funded and supported by the Swedish International Development Cooperation Agency (SIDA), PMU Interlife, and Läkarmissionen. The specialist services for victims of sexual violence started “as a kind of accident. It was not planned. We had to react. We did not have a choice”, says Mukwege. “We were faced with atrocities I could not even describe, and we had to react as human beings. We couldn’t stand by and watch.” A common atrocity is rape, another is the insertion of firearms by soldiers to destroy the genital and pelvic organs of women, including pregnant women, “as if they were the main target of the conflict”, says Mukwege. These acts seem a deliberate move to traumatise and humiliate young

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girls and women, and cause breakdown of relationships and communities.

Today, the service admits about ten women each day, and 30% of them have to undergo major surgery. But now, Panzi Hospital also provides psychosocial support and vocational training, medical and other support for those with HIV, and care for children who were conceived through rape. The hospital has also developed connections with medical institutions and other supporters worldwide. Mukwege is now embarking on a global campaign, with UNICEF and Eve Ensler, playwright and founder of the V-Day Movement, to highlight the continued problem of sexual violence in the DRC. In a statement, Ensler said recently: "What I have seen and heard and experienced in eastern Congo is without a doubt the worst situation of violence towards women in the world." The plight of these women continues with the ongoing conflict in the DRC, despite previous ceasefires, elections, and the presence of UN peacekeeping forces. The UN estimates the death toll in the DRC to be among the worst since World War II.

Mukwege hopes that his prizes and the recognition they bring mean that "the suffering of the women in the DRC is finally being heard by the international community". Bohlin comments that Mukwege "could easily move to Europe with his family, but he has chosen to stay in the DRC and help his people. He does not work just for himself, he works for his country and the people living in the country." Mukwege recalls that on the day he left home to attend the Palme Prize award ceremony, he said goodbye to the women of his community and "promised them I will be back soon and complete their treatment".

For more on **Panzi Hospital** see
<http://www.panzihospitalbukavu.org>

For more on the **Olof Palme Memorial Fund** see
<http://www.palmefonden.se>

For more on **V-Day** see
<http://www.vday.org>

Sexual terrorism in the eastern DRC: an interview with Christine Shuler Deschryver

Amy Goodman &
Christine Shuler Deschryver

AMY GOODMAN [AG]: Congolese human rights activist Christine Schuler Deschryver has been leading the struggle against the epidemic of rape in the Congo, what she calls a, quote, “femicide.” I interviewed her in October of 2007 in our firehouse studio. This is how she explained the sexual violence in her country.

CHRISTINE SCHULER DESCHRYVER [CSD]: And we are not—I’m sorry just to talk like this—we are not talking about normal rapes anymore. We are talking about sexual terrorism, because they destroyed, and they—you cannot imagine what’s going on in Congo. Rape is a taboo, I think, in most of African countries, so the women who accept to go to the hospital or to be registered, it’s because they don’t have a choice anymore. They have to go and be repaired, because we are talking about new surgery to repair the women, because they’re completely destroyed.

AG: And the women who come to this hospital, what—they have been raped, and they have been physically—

CSD: Destroyed.

AG: How? What is the operation? What is the—what is the operation that they go through?

CSD: The operation—today we are talking about repair surgery, because these women have to be repaired. They are not just rape like usual rape, but they put hot plastics inside the organs. They put woods, they put

Christine Schuler Deschryver is a Congolese human rights activist. She lives in Bukavu in the eastern part of the Democratic Republic of Congo and is the director of V-Day Congo.

This interview was originally broadcast on Democracy Now!, August 12, 2009.

bamboos, they put everything—

AG: Guns?

CSD: Yeah, guns. They shot inside the women, so they’re completely destroyed. We have some survivors in these hospitals since more than three years, so every two months or every three months they have to be re-operated again. And it’s impossible, you know, to keep all these women in this hospital. We don’t have room anymore.

AG: They suffer from fistula. Can you explain what that is?

CSD: I’m not a doctor. It’s quite very difficult. But I know that when they have fistula, it’s like, you know, instead of—it’s everything, urine and things, everything comes out.

AG: They’re completely incontinent.

CSD: You cannot control. You’re out of control, so these people smell very bad, and they have infections. And they cannot live, you know, in communities. And they have to be repaired by heavy surgery.

AG: So they can’t control their urine or their bowel movement, and so—

CSD: Not at all. So everything just go out when they’re walking, when they’re sleeping. It’s just—

AG: They become pariahs in their community.

CSD: Yeah, yeah, of course. And also, you have to know that in your community, when they know you are raped, you are fired from the village. They stigmatize you, and also the husband, if you survive, he will just ask you to leave, most of the time with the children.

AG: That was Congolese human rights activist and director of V-Day Congo, Christine Schuler Deschryver. Well, she met with Secretary of State Clinton in the Congo yesterday and joins us now on the telephone from Bukavu in the eastern DRC.

Christine, welcome to Democracy Now! What is the significance of the Secretary of State's trip?

CSD: Good morning, Amy.

I have to say it was a great honor for us, you know, to have the first Secretary of State here in this war zone, especially coming to Goma. And the goal that she had was to really see by herself what's going on with the women here in DRC. So, we all—we were all so moved. And since the last thirteen years, it was the first day that we started to have hope again. So we were deeply moved, and we're so thankful to Hillary for coming here in DRC.

AG: Can you explain what exactly Secretary Clinton has promised for the people of the eastern Democratic Republic of Congo in terms of aid?

CSD: Yeah, first of all, she promised like \$17 million to fight like the sexual violence. And what was really, really important for us is she said that \$3 million will be like to train a new police force, especially with women police force to fight against sexual violence. And that will be very, very important. And also, most of the funds will go like for training of healthcare and medical care, counseling, economic, etc.

So we were—we are all very happy about all the aid,

but I have to say that we already have lots of promises, and now we have to work closely together to ensure that the meeting results in real change that she delivers. So we will really be following up that everything will happen the way she promised it yesterday.

AG: Now, what about this issue of the US-, the UN-backed Congolese army in the area now increasing the rate of rapes? And we're actually not just talking about women and girls, but also of men and boys, as well. Is that right, Christine?

CSD: That's totally right. I have to say, since they started like with the new operation called "Kimia II" with the Congolese army and supported by the UN forces, the situation here on the ground is terrible, terrible, because now we have the militias just—not just going and rape the women, they are burning villages, they are killing the people, they're raping men. They are like—they already use the same methods like Janjaweed in Darfur. So now the level of violence in both North and South Kivu is just incredible. There's no more words to describe what's going on. And we still, like—we all, like—like the international NGOs, the local, the national NGOs, all of them made reports to alert the world that there's a tragedy going on with this operation. But they're still continuing, and we don't understand that.

AG: Christine Schuler Deschryver, we thank you very much for being with us, the Congolese human rights activist, speaking to us from Bukavu in the eastern part of the Democratic Republic of Congo. She met with Secretary of State Hillary Clinton yesterday. She is the director of V-Day Congo, the organization against [...] violence against women and girls that was founded by Eve Ensler.

Soldiers who rape, commanders who condone

Human Rights Watch

I was just coming back from the river to fetch water.... Two soldiers came up to me and told me that if I refuse to sleep with them, they will kill me. They beat me and ripped my clothes. One of the soldiers raped me... My parents spoke to a commander and he said that his soldiers do not rape, and that I am lying. I recognized the two soldiers, and I know that one of them is called Edouard.

-15-year-old girl, Minova, South Kivu, March 2009

We were three young women and we were on our way to Cirunga.... They [the soldiers] raped us and dragged us to their camp which was not far away. I stayed there for one month, under constant supervision.... There was no conversation between us, he had sex with me at any moment, when he felt like it, and with a lot of violence. I spent my days crying. I begged God to free me from this hell.

-23-year-old woman, Kabare, South Kivu, April 2009

One evening some soldiers came to attack us. This was in February or March 2008. They said they would kill our father. The soldiers were angry with my dad because he had stopped them from cutting down an avocado tree [as firewood].... We stayed in the living room. Two soldiers raped my bigger sister. When he had finished, he injured her with a knife at the eye, and he did the same with my brother.... Then they left. My mother brews beer and they took the money she had earned from that.

-13-year-old girl, Kabare, South Kivu, April 2009

This is the summary of the Human Rights Watch Report *Soldiers who rape, commanders who condone* (June 2009). The entire report can be read or downloaded at hrw.org.

In the Democratic Republic of Congo, tens of thousands of women and girls have suffered horrific acts of sexual violence. The government army, the Forces Armées de la République Démocratique du Congo (FARDC), is one of the main perpetrators, contributing to the current climate of insecurity and impunity in eastern Congo. FARDC soldiers have committed gang rapes, rapes leading to injury and death, and abductions of girls and women. Their crimes are serious violations of international humanitarian law. Commanders have frequently failed to stop sexual violence and may themselves be guilty of war crimes or crimes against humanity as a consequence. Although other armed groups also commit brutal acts of sexual violence against women and girls, the sheer size of the Congolese army and its deployment throughout the country make it the single largest group of perpetrators.

The destructive long-term physical, psychological, and social effects of sexual violence on the victims cannot be underestimated. The situation is particularly bad for girls, who are at risk of serious injuries after rape, and whose health is at risk if they get pregnant. Their future is often compromised as they have difficulty finding a partner, drop out of school, are rejected by their own family, or have to raise a child born from rape while still being a child themselves.

This report looks at abuses of sexual violence committed by the FARDC, efforts to stop it, and why such efforts have failed so far. More specifically, the report looks at the 14th brigade as an example of the wider problem of impunity. Since its creation in 2006, this brigade has committed many crimes of sexual violence in different areas of North and South Kivu in eastern Congo. It has also been responsible for abductions, killings, torture, looting and extortion. Without sufficient food or pay, soldiers have attacked the civilian population to loot and extort goods.

Abuses against civilians peaked when the brigade was cantoned with almost no provisions in Kabare, South Kivu between January and August 2008. Officially, since March 2009 the 14th brigade has ceased to exist when it was amalgamated with combatants from other armed groups into two new brigades—a process that saw former armed opposition units assimilated into the FARDC without any vetting and only limited training. The command structures of the 14th brigade provide the backbone of some units, and many Congolese, including soldiers, still refer to former 14th brigade troops as the 14th brigade. Sexual violence by them has continued to the present. Many of the soldiers from newly integrated armed opposition groups have also committed acts of sexual violence.

Despite protests by victims, residents, NGOs, and even politicians, Congolese military courts have done little to bring to justice those responsible. Commanders have protected their soldiers. The army hierarchy has even left it unclear under whose command the 14th brigade is.

As the example of the 14th brigade illustrates, sexual violence by the army continues despite serious efforts by the government, the international community, and Congolese civil society to fight mass sexual violence. In November 2007, President Kabila's wife, Olive Lemba Kabila, opened a country-wide campaign supported by UN agencies to combat sexual violence, aiming to raise awareness and push for an end to impunity. The first lady's involvement gave the issue of sexual violence a higher profile. In 2006, a landmark sexual violence law came into force, providing a much improved legal framework to try those responsible, and in late 2008 the International Criminal Court launched an investigation into crimes in its jurisdiction in the Kivus, including sexual violence. There are also now

many important, if still insufficient, programs providing medical, psychological, economic, and legal support to survivors.

Less money has been allocated to prevention and protection; according to a MONUC estimate, only 11 percent of donor funds for sexual violence have been allocated for the physical protection of women and girls.

As part of those efforts, the government, international donors, and NGOs have taken specific steps to deal with the army's poor human rights record, sometimes as part of broader security sector reform. Such measures include training on international humanitarian law and Congolese law; building the capacity of the military justice system and the police; improving access to justice; and ensuring regular payment of army soldiers. As a result of these efforts, some progress has been made. The military justice system is better equipped to deal with sexual violence than a few years ago, and has made some limited progress in bringing ordinary soldiers to account for

their sexual crimes.

Despite these important advances, the military justice system remains a weak institution. To date, only a small fraction of the total number of acts of sexual violence committed by soldiers has been prosecuted. Access to justice remains difficult. For example, during 2008, 27 soldiers were convicted of crimes of sexual violence in North and South Kivu provinces. During the same year, the UN registered 7,703 new cases of sexual violence (by army soldiers and other perpetrators) in North and South Kivu.

Moreover, almost all military prosecutions of sexual violence to date have focused on lower-ranking soldiers. No senior military figure has been prosecuted for sexual crimes; the criminal responsibility of senior



officials, including their command responsibility, is rarely the subject of investigations by military prosecutors. The most senior officer convicted of crimes of sexual violence in the Kivus has been a captain-no major, lieutenant colonel, colonel, or general has been prosecuted. Military commanders continue to be powerful figures who are treated as untouchable by political and military leaders; brigade commanders in particular are often given free reign. Commanders also continue to protect their soldiers in many instances, obstructing the course of justice. This undermines ongoing efforts to render justice even for crimes committed by lower-ranking soldiers.

The Congolese government and its international partners should intensify efforts to prevent and punish sexual violence crimes by army soldiers. They should take measures to build the capacity of the weak military justice system; professionalize the army, includ-

ing by improving living conditions of soldiers; and introduce a vetting mechanism to remove officers with responsibility for past crimes from the army.

But initiatives to strengthen the military justice system and to improve command and control within the FARDC will take time to implement and will do little to address the immediate problem of impunity, especially of more senior officers, which is fundamental to both justice for victims and the prevention of further crimes. Since the military justice system remains a weak institution, the government should consider establishing a mixed chamber, composed of international and Congolese judges and prosecutors. This mixed chamber would prosecute high-ranking officers, armed group leaders, and civilian leaders responsible for war crimes and crimes against humanity, including sexual crimes, beyond the few individuals who will be tried by the International Criminal Court (ICC).

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