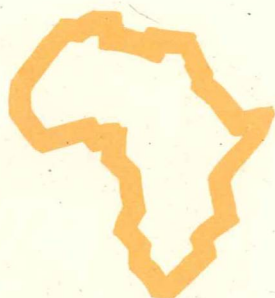


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MAGDALENA K. RWEBANGIRA

The Legal Status of Women and Poverty in Tanzania

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Magdalena K. Rwebangira

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Executive Summary

I am grateful for the assistance of Gregory Kamugisha and J. Motete who assisted me in data collection for part of this paper, Helena Altvall, Joyce Ikingura and Kjell J. Havnevik who read earlier drafts of this paper and gave valuable comments. Finally but not least, I am grateful to the then Embassy of Sweden in Tanzania whose financial assistance made the study possible.

The report was originally written as part of the background paper on poverty assessment and presented at a workshop organised by the Government of Tanzania and the World Bank in Arusha 14–20 May, 1995.

This report has five sections. These are the executive summary, setting out the purposes of the study, the main findings and recommendations. The second section is the introduction which sets out the background and objectives of the study. The third section gives a review of the laws affecting the status of women in Tanzania in regard to the situation of poverty. The laws revised here are the Law of Marriage Act, 1971, Inheritance Laws and the Land Laws. Section four discusses significant legal changes of gender orientation in the last twenty years and assesses their impact on poverty alleviation among women. The fifth and final section has conclusions and recommendations for change.

PURPOSE OF THE SERVICES

The objectives of the study were to analyze and describe how the legal framework, social practices and attitudes in Tanzania differentiate between women and men and what relation such differences have on the poverty situation.

The scope and focus of the study was to answer four important questions namely; one, to summarize how the legal system of today differentiates between men and women and its impact on poverty having regard to all systems of law applicable to Tanzania such as statutory law, English common law, Customary and Religious laws.

The second important question for the study was to identify changes underway within the legal framework and analyze future impact of such changes on poverty development.

The third task was to identify changes needed but still not under way including the responsible body for such changes.

The fourth task was to identify and describe social practices and attitudes subordinating women and contributing to poverty as well as identify possible actors to initiate needed changes of such practices.

In order to accomplish this task I was required to give background information on the economic situation of women in relation to men. In this endeavour, the study was to compile and analyze information on the status of women in relation to poverty and non-poverty. Emphasis was to be placed on findings and observations which can explain poverty development in concrete terms related to the status of women and to the legal system. Laws of special interest were: Inheritance Law, Land Law, Law of Marriage Act, Child Custody and Maintenance. Furthermore, I was to describe and analyze how the different legal systems operated side by side and how they contradicted and/or supported each other. Other issues of interest for the study were listed as the following, to:

- summarize important legal changes which have taken place during the last 20 years reducing or increasing poverty among women.
- identify impact on poverty through the application of laws by courts, police, prosecutors etc.
- identify failures in the follow up of the observance of the laws contributing to poverty.
- identify stakeholders and/or constituencies for reforms both those under way and those not yet initiated.
- identify key actors to be mobilized for reforms as well as obstacles and opportunities for such reforms and summarize this information in tabular form for easy reference.
- identify strategic activities in the area of civic education noting both efforts undertaken by the Government and others.

Finally the study was to identify key contacts including individuals in government, parastatal organisations, private voluntary organisations, the private sector, specialised research institutions and the University of Dar es Salaam etc. who can be consulted by future teams. For each person listed an address, phone number and brief summary of areas of expertise was to be provided.

All materials obtained during this assignment were to be photocopied and provided with the draft report.

MAIN FINDINGS AND RECOMMENDATIONS

Expropriation of women's labour

Women's economic contribution in the family, both natal and affinal, is expropriated through discriminatory marriage and inheritance laws and/or practices of courts and other law enforcement institutions which hand over the fruits of women's labour to men in different capacities.

This discriminatory treatment of women in practice denied women a creative role in empowering themselves economically and also discourages many women from taking initiatives on their own behalf as they remain unsure of the extent of the protection of their interests in the fruits of their labour and investment.

Too few laws have changed to promote women's economic rights in the last twenty years

Despite Tanzania's well known record of promoting equality between citizens and nations and egalitarian principles generally since independence, very few laws promoting women's rights have been actually enacted in the last twenty years.

Women's economic rights not a government priority

The government record in the last ten years has been particularly poorer, for even when reforms likely to enhance women's economic position have been supported, proposed and submitted to the government, such proposals have been shelved for as long as eight years by the relevant government department despite public statements to the contrary.

Women's constituency is weak

Although there is a big number of NGO's dealing with women's rights in one way or the other and therefore one could say there is a women's constituency, this constituency is weak. It has not transformed itself into a strong lobby that needs to be taken seriously by the different party leaders and election candidates even in this year of general elections! There is need to build capacity among NGO's and particularly to identify and train emerging young women leaders. The nature of this training has to include analytical skills in the con-

text of human rights, lobbying and strategies for gaining legitimacy in women's communities. This has to target identification of women's interests and popularising them among women while at the same time encouraging the latter to think and act politically on the basis of their interests.

Introduction

BACKGROUND AND OBJECTIVES

Poverty is generally taken to mean backwardness in both economic and social spheres of life. In Tanzania, available statistics show that women are poorer than men. Women have had less access to formal education at all levels particularly in secondary schools and higher learning institutions. They accounted for an average of 37 per cent of all students registered in public secondary schools from 1982 to 1990, according to the Ministry of Education, and 17.5 per cent of all students at the Universities of Dar es Salaam and Sokoine between 1988 and 1990.¹ According to the 1988 Population Census, only 3 per cent of all women in the country were engaged in the wage/salary employment sector and only 24 per cent of the Central Government employees were women. Of the formally employed women, the majority are concentrated in auxiliary/ service status in fields of nursing, teaching, clerical and related jobs with lower pay. This is partly due to the low level of education attained by women.

A particularly heavy burden of poverty is evident in the rural areas where the majority of women live and work. According to the 1988 Population Census, women account for 75 per cent of the active population engaged in agriculture and they produce 90 per cent of the food requirements of the country. In another study undertaken by the World Bank (Poverty Profile 1993), it was indicated that poverty is particularly prevalent in rural areas. For a poverty line of TShs. 31,000.00—the annual cost of a minimal package of food and other necessities of life—the incidence of poverty was 44 per cent in rural areas compared to 17.9 per cent in urban centres other than Dar es Salaam, and only 4.4 per cent in Dar es Salaam itself. In 1991, about 73.5 per cent of the population lived in rural areas, but 90 per cent of the poor lived there (World Bank 1993).

Problems of agricultural production, the main activity in rural areas, include rampant inefficiency of most cooperative societies

¹ Bureau of Statistics, Dar es Salaam, 1992, page 69. The data on University entry is combined for both Universities.

where marketing of agricultural produce has been deteriorating for years after they were re-established in 1984. Price liberalization and removal of subsidies, associated with structural adjustment programmes, have reduced the ability to purchase agricultural inputs such as fertilisers, farm implements and insecticides. The result has been a decline in food availability at the household level, as it was in 1994, according to the Ministry of Agriculture, Livestock Development and Cooperatives, which often leads to malnutrition of women and children. At the same time women struggle to fulfil their traditional responsibility of feeding their families using poor implements like hand-hoes, poor seed types, poor methods of preservation and are regularly confronted with the natural disasters of floods, for example, over three consecutive years 1992–1995 in Tanga, Mtwara, Iringa and Mbeya regions, and drought thereby consuming most of the poor women's time for minimal returns.

Poverty and status of women are influenced by the prevalent attitudes and cultural practices of both women and men. For example, in many communities it is generally believed and accepted that women, and only women, are responsible for almost all of the housework; food preparations and child care. In rural areas, housework can include such chores as gathering firewood and carrying water, weeding, sowing and harvesting food and cash crops on family plots, grinding, pounding and milling grains. Among the Sukuma, for example, women are usually responsible for caring for animals which includes milking and sometimes grazing of cattle. A Maasai woman is, likewise, responsible for the construction of their traditional mud houses (*manyata*) to protect their families. As a result of such attitudes, a study made by the Tanzania Food and Nutrition Centre in Iringa rural locations in 1992 showed that about 65 per cent of an average woman's day time is spent on housework. Social structures, norms and attitudes discriminating women have gone further to affect such matters as eating habits. For instance, in choices of who is to be fed in times of hunger, in many communities, chances are that boys and men would be fed rather than girls and women.

Even when there is plenty of food, concerning choices on who should eat what, men are usually favoured as household heads. The ILO (1981) report indicated that women and children may suffer from undernourishment because of maldistribution of food, even in families with higher incomes, well above the poverty line. It has been a custom of some ethnic groups, e.g. the Hehe of Iringa and Yao of the southern regions of the country, to point out some protein-rich foods like eggs, fish and milk as taboo for women to eat. Traditionally,

parents used to view education for boys as more economically beneficial than for daughters, who could either lose marriage chances (by being educated), marry early and stop working or move to husbands' villages or face job discrimination (Nafziger 1984). In some other ethnic groups, e.g. among the coastal Zaramo and Kwere, southern Yao, Makonde, Matumbi and others, girls are kept at home, for several months or sometimes a year or more in their early adolescence to undergo some traditional initiation rituals in preparation for marriage. This usually interferes with school programmes and occasionally girls have missed schooling opportunities as a result of this practice.

Women have dual roles in the economy and this lays a particularly heavy burden on women in a poverty situation. Despite the fact that women do most of the work, including income generating activities like the production of cash crops, it is customarily known and accepted that men, and only men, are household heads and hence are the custodians, if not sole owners, of money generated. Priorities on expenditure of the money usually fall within their discretion and sometimes may involve spending on acquiring another 'new' wife. Thus men's attitudes are unsupportive of women's efforts.

Fertility control is one of the key factors affecting women's economic status. It has a bearing on access to education or having been enrolled continuing with education. Besides education, fertility control or lack of it, has a direct relationship with women's career development and labour productivity. Yet contraception use remains low at 10 per cent as of 1992. Despite the recent change of heart by the Government through the newly established National Family Planning Project which has declared every person who has attained puberty eligible for family planning services, in practice unmarried young women remain excluded from these services due to religious and moral perceptions of both the family planning service providers and community at large (Rwebangira 1992 1994).

Insufficient information and communication network is another obstacle towards improving women's status. Some attempts by women and opportunities to achieve emancipation lacked effective reporting by the media machinery. Moreover, dissemination of properly designed editorials and collection of facts and events concerning gender imbalances could help to reshape the attitudes of the general public concerning women, especially those most affected by poverty. Previous campaigns by government owned media on matters like cholera, literacy and recently by both government and privately

owned media on issues like AIDS and political pluralism have proved the usefulness of a consistent media machinery.

Whether one takes life to begin at conception or birth, it remains true that men and women start out as equals in life. Although supporters of the biologically determined difference claim that there are fundamental differences between men and women which are genetically predestined, it is generally accepted that human beings are born with equal opportunities cultural and socio-economic background excepted. Moreover, the scales begin to weigh against women as soon as their gender is detected. As noted by Rwezaura, families tend to value the labour of female children more than that of male children. Consequently they are more likely to regard the opportunity cost of sending a girl to school to be much greater than the cost of sending a boy. This is only one factor among many which contributes towards disparity in education and the resultant disparity in job experience and training (Rwezaura 1991:19). Other factors contributing to disparity in education between boys and girls have been given as pregnancy in school (Puja and Kassimoto 1994) and arranged marriages compounded by customary payment of bride wealth for a girl's hand in marriage (Katapa 1994).

Girls are further disadvantaged by the predominant patrilineal system whereby children's affiliation follows the male line. In a culture where social security is by and large provided by kin, boys are treasured because they are expected to provide this security especially in parents' old age by continuation and expansion of kinship. Furthermore, marriage tends to be patrilocal, i.e. the bride follows the groom and thus a girl is seen as a transitional passenger (*msafiri*) by her family. Many ethnic groups in the country have proverbial names portraying this concept. For example among the Bahaya, it is "*Tibombeka Mwabo*" (they do not build at home). All these factors combine to make a boy more prized than a girl child, except for the labour contribution at a young age referred to above.

Moreover, research indicates that there are more girls in private than public secondary schools, an indication that parents appreciate the need to educate girls even if they have to pay more for it.² The real bottleneck for economic improvement and setback to women's efforts to break from the poverty cycle seem to start with marriage. It is at the level of marriage that a woman's prospects for self-actualization and determination are greatly curtailed. Firstly, **although most women spend most of their productive lives as wives**

² TADREG 1990 and SIDA No 53.

and/or mothers, they get the least rewards and more problems at this particular time in their life cycles. These include practical difficulties in obtaining divorce or having succeeded to obtain divorce getting little or no share of the property acquired by the joint efforts with her husband. Contributing to this predicament is the unfavourable court practice in child custody and maintenance claims and particularly an inheritance law that has outlived its usefulness.

This paper will attempt to highlight the connection between women's legal status and poverty. It will attempt to show that women are generally economically poorer than men and that women's poverty is particularly related to expropriation of their labour during and at the end of marriage. This study argues that too few laws have been enacted to reverse this trend and that the effectiveness of those few is hampered by the negative attitudes of the courts, men and sometimes women themselves.

Review of the relevant laws

INTRODUCTION

This section discusses three important laws which in my view govern the status of the majority of women and are relevant to the efforts to alleviate poverty among them. These laws are the Law of Marriage Act, 1971 which provides for matters like forms of marriage, division of matrimonial assets, child custody and maintenance. Another such law discussed is the Law of Inheritance which has not been unified in Tanzania and encompasses Customary law, Islamic law as well as Statutory law. Finally, there are the Land laws including the recommendations of the Presidential Commission on Land.

THE LAW OF MARRIAGE ACT, NO. 5, 1971

The enactment of the Law of Marriage Act (LMA) in 1971 was seen as a milestone in the integration of personal laws in Commonwealth Africa (Read 1972) and providing women with some basic civil rights in marriage and divorce (Rwebangira 1992). It is the main source of law regulating married women's rights in a specific and meaningful way. It provided for forms of marriage, minimum age of marriage and separate ownership of property between spouses during marriage. A wife also has an interest in the matrimonial home capable of being protected by caveat. Divorce, child custody, maintenance and division of matrimonial assets on divorce or separation are also provided for by the Act. In order to counter the legal plurality, inherent in Tanzania's triple heritage of traditional, Islamic and colonial influences the LMA stated categorically that it superseded Customary and Islamic Law in its 2nd Schedule, amended the Judicature and Application of Laws Ordinance, Cap. 453 by virtue of section 9 (3A) which states:

Notwithstanding the provisions of this Act, the rules of Customary Law and Islamic Law shall not apply in regard to any matter provided for in the Law of Marriage Act, 1971.

This was a turning point in giving direction to women's rights in relation to marriage. Nonetheless Customary and Islamic Laws and norms although no longer legally applicable, continue to influence people's attitudes and practices as will be noted in the course of the discussion.

Division of matrimonial assets

The LMA introduced to Tanzania the concept of separate property as opposed to community of property between the spouses. It provides in section 56 that married women shall enjoy equal rights to acquire, hold and dispose of property. This is generally considered progressive as married women are encouraged to acquire properties on their own. Moreover, in practice properties are acquired by the family through the husband, the so-called head of household. Hence the property so acquired would be in the name of the husband.

In appreciation of this reality of women's lives the LMA provides in section 114 that the court has power to order division of property acquired by the spouses through joint efforts during the existence of the marriage. I will reproduce the section for ease of reference:

1. The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.
2. In exercising the power conferred by subsection (1), the court shall have regard
 - (a) to the custom of the community to which the parties belong;
 - (b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
 - (c) to any debts owing either party which were contracted for their joint benefit; and
 - (d) to the needs of the infant children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.
3. For the purposes of this section, references to assets acquired during marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

There is abundant caselaw to show that women responded by challenging the courts to deliver what this section promised.

The most commonly contested asset is the matrimonial home and any other houses if any. Other forms of property such as sewing machines and other household utensils and furniture are also claimed.

Nonetheless it took the courts at least 12 years to give full weight to the letter and spirit of the LMA in 1983. Before then the courts insisted that a wife who was not engaged in income generating activities was not entitled to a share of the matrimonial assets. This view was emphasized in *Zawadi Abdallah vs. Ibrahim Iddi*,³ where it was argued among other things that a wife's assistance to her husband's economic enterprise is merely doing a wifely duty, which duty does not entitle her to any share of the property acquired as a result of such husband's economic activities. Finally the Court of Appeal of Tanzania held that a spouse's domestic services rendered during the existence of the marriage, amount to an "effort" and are a "contribution" within the provisions of section 114 of the LMA. This decision in the now famous case of *Bi Hawa Mohamed vs. Ally Selfu* was a significant landmark in matrimonial property relations in Tanzania. Firstly, it acknowledged that housework and child care amounted to contribution entitling one to division of matrimonial assets. Secondly, the court recognised that marriage is an economic venture in which spouses invest for their current and future needs (Rwezaura 1989).

Moreover, courts are still reluctant to order equal division of property where financial or other tangible (often "masculine") contribution in terms of work or property has been proved.

Apart from restrictive customary attitudes on a former husband sharing property with an ex-wife, there are husbands who believe that a wife can only make a worthwhile contribution if she is engaged in wage employment.⁴

In the case of *Mikidadi vs. Mwanaisha Hashim* (PC) Matrimonial Civil Appeal No. 8 of 1980 in which a Moslem wife had been in gainful employment, she got an equal share in the division. But in *Bahari Binti Rajabu vs. Juma Abdallah*, Matrimonial Civil Appeal No. 8 of 1984 where the wife was not working the Primary Court order for equal division was reversed by the District Court, which decision was upheld by the High Court on account of the wife not having made a financial contribution.

Having put themselves in the trap of only acknowledging tangible contributions, courts face the difficulty of determining the extent of contribution and the brunt of this difficulty is often borne by the divorcing wife. In *Nicholas Boas vs. Deborah Ridekwa* (supra) it was held by Mapigano, J, upholding the judgement of the lower court in

³ Dar es Salaam High Court Civil Appeal No 10 of 1980.

⁴ 1. *Venerando s/o Balima vs. Antonia d/o Tarshi* Matrimonial Appeal No 3/85, 2. *Mohamed Abdallah vs. Halima Lisangwe* Matrimonial Appeal No 12 of 1987 Dar es Salaam Registry (unreported), *Hamida Abdul vs. Hamisi* Matrimonial Civil Appeal No 84 of 1983.

which a divorced litigant woman had been contesting the courts' denial of a share of matrimonial assets, inter alia, thus:

there was no evidence to show that the respondent actually contributed shs. 15,000/= towards the building project. There was not sufficient evidence upon which the learned magistrate could have proceeded to grant the division of assets. There was no concrete evidence as to what she has contributed. The petitioner is bound to prove his/her case to the satisfaction of the court. She can make a fresh action if she so choose (emphasis supplied).

The requirement of "concrete evidence" here seems to negate the spirit of matrimonial life. It presupposes that spouses would keep all the documents and chronology of events on their personal contributions, whereas in real life, matrimonial living is built on mutual trust. It is possible also that some receipts and other documents issued in the husband's name are actually made on behalf of the other spouse. It is surprising that the courts sometimes seem reluctant to accept this explanation when presented by a divorcing wife. In a case originating from Mbeya Mariam Ali Mohamed vs. Shabdin Ali Shivji (Civil Appeal No. 6 of 1978) where a wife, saved money, took a loan from the employer and then added her inheritance to build a home lost the house to her husband on divorce. Her said husband became the writer and the witness of a subsequent building agreement as well as the manager of the building project which the wife claimed to have financed all by herself. When on divorce the husband alleged that the wife had been his agent, the court believed him and even overvalued his token monetary contribution despite the wife's overwhelming evidence testifying to her more substantial financial contribution. In the end the wife got nothing.

In a case originating from a rural area, (Kagera), Hermelinda Herman vs. Thadeo Mutarubukwa Misc. Civil Case No. 25/88, a wife, left in a remote village of Kagera Region to develop and maintain claims on land while the husband worked in wage employment in different parts of the country, sought division of landed property on divorce after 28 years. Although the court ordered division it was reluctant to specify how the parties should go about the division. Instead, the Resident Magistrate In Charge of the region made an ambiguous order that the parties should "share" the property. Meanwhile, the villagers assisted the husband to stop the wife from effecting such order. The police were also largely unhelpful. In another case between the same parties, she was ordered by the High Court to hand over her Certificate of Title (in regard to an urban based property) to her ex-husband which it was claimed she "stole" from him despite its

being registered in her name. Some judges have expressed their views on both the concept of division of matrimonial assets as well as the principle established in *Bi Hawa's* case. In *Hamida Abdul vs. Ramadhani Mwakaje*⁵ J. Bahati, held that he accepts that *Bi Hawa's* case is authority for the proposition that domestic services are valuable contributions to property acquisition during the subsistence of a marriage. Nonetheless, he disagreed that it is an argument where a wife's main contribution is in the form of domestic services, she should get an equal share of the assets. He was commenting on the case before him, wherein the Primary Court had awarded shs. 50,000/ to the wife as her contribution in acquisition of a family house in a Buguruni suburban area in Dar es Salaam. Dissatisfied with the award, the wife appealed to the District Court which, however, upheld the decision against her. She finally reached the High Court on appeal where J. Bahati, in addition to the statement on the authority of *Bi Hawa's* case had this to say:

In this case the amount of shs. 50,000/as her share is a fair and reasonable amount. Apart from these domestic services, there is no evidence to show [the] contribution by the wife towards the acquisition of the house.

The appeal was thus dismissed. Obviously, domestic services performed by a wife in both rural and urban settings are still undervalued by the courts and with it women's contribution.

In *Zakia Haji vs. Hamisi*,⁶ a woman had appealed to the High Court claiming a more equitable distribution of the matrimonial assets. Dismissing the appeal, Ruhumbika, J., referred to it as "a mere goose-chase" as she was given enough in the absence of proof of "tangible" contribution.

Some magistrates even try to avoid making any decision on the matter but direct a divorcing wife to bring a fresh suit. In one such case originating from Mtwara, the appellant in this case petitioned for divorce against the respondent in Mtwara Urban Court. She also petitioned for division of matrimonial property. The trial magistrate heard the evidence as regards the petition for divorce and granted the divorce having been satisfied that the marriage has been proved to have irreparably broken down. But surprisingly instead of deciding the issue of division of matrimonial property, the trial magistrate made an order that the respondent must bring witnesses in court to

⁵ Civil Appeal No. 12 of 1988 (supra).

⁶ Matrimonial Civil Appeal No. 84 of 1983. (DSM Registry) (Unreported).

show cause why the matrimonial property should not be divided. As a result the case came before the High Court for revision.⁷

Other problems connected with the implementation of the division of matrimonial assets have been pointed out by some judges as lack of awareness of assets. Some husbands register their properties, such as land titles, in the names of their relatives or even concubines. Thus, when their wives seek division of their properties on divorce, they tend to give inaccurate information to the courts and end up losing their cases. In *Rukia Haji vs. Hamis Omari*⁸ a wife had listed three houses as matrimonial assets liable for division. It turned out that there was, in fact, one house referred to as two houses under two different names whereas the third one was merely a hut and not a valuable asset. When this happens, it tends to erode the credibility of the wife's evidence.

The reasons for husbands' registration in names other than their own or those of their spouses may be either to avoid a possible future matrimonial claim or to appear to abide by the strict Leadership Code imposed by the TANU/CCM government during the period of the Arusha Declaration which lasted from 1967 to 1990. The purpose of the code was to control amassing of wealth by public officials. The said code, among other things, prohibited such officials from owning rented houses. The Leadership Code remains in place theoretically but its enforcement and political clout in practice have relaxed in recent years. Registration of property in pseudonyms seems to be motivated by the uncertainty created by the rift between official rules and actual practice. The desire to evade matrimonial claims is in practice manifested in fake transfers, often at the outset of matrimonial problems.

There is, generally, in any case a very low incidence of division of matrimonial property. All the above reasons may offer some explanation for this. The reaction of the community may be another explanation. Some people take claiming property from an ex-husband as being vengeful particularly if one has children. There are cases where women have tried to seek registration of the property in the names of the children of the marriage but the courts have not bought that innovation. On the contrary, the courts have tended to proceed to allocate the same to the husband.

Some women simply prefer a clean break. Some explanation has been that taking property tends to escalate and perpetuate the conflict

⁷ *Fatuma Mohamed vs. Saidi Chikamba*. Civil Revision No. 2 of 1988.

⁸ *Matrimonial Civil Appeal No. 31 of 1983*.

as if the man "has been robbed" (Himonga 1987), others simply want to start a new life on their own and leave the often long history of matrimonial trouble behind. As a result most women experience a drastic fall into poverty irrespective of previous economic status achieved during marriage. She becomes a dependant on the charity of her relatives and friends. This is not only humiliating and unfair, but it also sends a negative message to other women. The message is loud and clear: **it does not pay to invest in marriage.**

Marriage is one institution where most women spend their most productive time. Such inhibition can only keep women from realizing their potential and compound their poverty. There are few cases originating from rural areas, probably because rural couples have very little property to divide. Moreover, landed property which is commonly contested is in urban areas.

Child Custody and maintenance

The Law of Persons, 1963 G. N. No. 436 provides in section 175 that children born in wedlock belong to the father. The LMA on the other hand provides that a mother can have custody of her children under certain conditions. The guiding principle is the welfare of the child(ren).

Despite these seemingly neutral provisions of the law it is generally the fathers who retain custody of children after divorce. The practical result of custody differs from written law because in the courts, when a custody claim is filed, often brought by a mother, the mother gets custody if the father does not contest for it. However, if a father contests custody of his legitimate children he is more likely to get it than the mother.

Before enactment of the law of the LMA, 1971, the various personal laws such as Islamic and Customary Laws applied to matters of marriage and custody of children. These included mostly customary laws which since 1963 has been codified into Customary Law Declaration Order (CLDO). Islamic Law and Marriage, Divorce and Succession (Non-Christian Asiatic Ordinance) also referred to as the "Ordinance". Customary Law applied to Africans, Islamic Law to Muslims and the Ordinance to mostly Hindus.

Basically in all these personal laws the father of legitimate children was entitled to their custody except among matrilineal communities where such children, and hence their custody, were affiliated to the mothers' fathers and brothers. This assumption is supposed to have changed with the enactment of the Law of Marriage Act (LMA) in Tanzania.

Section 125 of the LMA which is long and would not find space in the scope of this essay declares the paramount of the welfare of the child as the guiding principle. This includes cases otherwise governed by customary law. However, the section sets five qualifications limiting the broad principle of welfare of the child in regard to placement of custody. These are the wishes of the parents, the wishes of the infant if old enough, the customs of the parties' community, the rebuttable presumption that an infant below seven years is best left with the mother, but to this end disturbance by change of custody would be considered undesirable and finally that the court shall not be obliged to place all children together.

One notes that these qualifications are conditions which in practice and historically favour the father. The majority of the Tanzanian population is patrilineal and their customs did not allow a mother to leave the matrimonial home with children other than the one nursing. Even today, in practice she will leave the child (or be made to) until a court order granting her custody is available. Since a court process takes three to ten years to complete on average, by that time it is often considered undesirable to change custody to the ousted mother on grounds of non-disturbance of the child(ren) concerned. A trend of the courts' practice studied in Dar es Salaam and Mbeya show that most custody claims are brought by women and a large majority of them are uncontested (Rwebangira 1991 1993).

In practice, the basic considerations for the court are often economic ability to provide for the child, appropriate housing, parent's (read mother) behaviour and non-disturbance of the status quo. Although all of these considerations are important, they ignore the fact that children need to be cared for on a day-to-day basis. This important aspect is ignored to the detriment of children's welfare and disempowers women. Moreover, the economic ability of men is often exaggerated.

With the drastic and continuous fall in real wages for salaried employees since the late 1970's, due to the country's economic crisis, recent studies have shown that women's involvement in the informal sector has been very important for maintaining families among the urban working class communities (Wagao 1988, Mbilinyi 1990). Some non-custodial mothers reported that they had to struggle to support their older children clandestinely, either at school or by preparing meals which children regularly stopped by and had on their way to school and sometimes on return. But where the court lamented the father's economic irresponsibility in not providing for his family, it ended up allocating custody of older children who had earlier left his

custody on their own (to follow their mother) back to him.⁹ Some magistrates have gone to the extent of ruling that, although the mother has been allocated custody, the father can take the children if he does not want to pay maintenance(!).¹⁰ So the economic considerations are overriding. But where a divorcing mother begged that the matrimonial assets be transferred in trust for the children, it was categorically rejected by the court, and ordered to remain in the name of the father.¹¹

In an economy where families, rural and urban, are surviving on income generated from sideline projects, which are done mostly by women with the help of their grown children (Wagao 1988, Mbilinyi 1990), custody allocation of grown children from one parent to another amounts to allocation and deprivation of (economic) resources respectively. Although this may very well pass as a blatant child abuse and could be used against women in custody cases, it remains a reality of current living conditions. The father's ability to survive divorce and punish the mother seems to be higher on the priority list, rather than the child(ren)'s welfare.

Consequently, many women both in urban but especially rural areas adhere to bad marriages for fear of losing the custody of their children should the father contest it. This trend encourages further development of poverty among such women as they live in suspense waiting for their children "to grow bigger" and hopefully be able to cope without their mothers before they can have courage to leave such marriages. Such suspense, it is submitted retards women's development. Moreover, most women are reluctant to go to court over matrimonial matters. Thus women do not receive custody of children as entitlement to all fruits of a marriage belong automatically to husbands, including custody and access to their children.

Maintenance for children

The legal principal governing maintenance is stipulated in sections 129–130 of the LMA. Under these sections, a father has a duty to maintain his children by providing them with accommodation, clothing, food and education whether or not they are in his custody. A mother does not have such a duty unless the father is dead or his whereabouts are not known or, is presently unable to do so.

⁹ See *Lea Kanyange Mbilauri vs. Paschal Mbilauri Mbeya*. R. M's Court No. 2 of 1988 (unreported).

¹⁰ See *Dinah Mwipopo vs. Wilbard Mwipopo*. (DSM) Matrimonial Cause No. 28 of 1984.

¹¹ See *Sardar Achgater Nazir vs. Hamid Khan*. (DSM) R. M's Court Matrimonial Cause No. 33 of 1988 (unreported).

The court also has corresponding power to order women of sufficient means to contribute towards the maintenance of their infant children.

All such orders cease at the infant's attainment of eighteen years. The amount payable depends on a parent's ability in each individual case.

Maintenance of children is also provided for under the Affiliation Ordinance (Cap. 278). This applies to children born out of wedlock. The amount payable per child per month is T.S. 100 only which is grossly insufficient given the high level of inflation. The Ordinance has not been amended since 1964 to the present and has long been overtaken by events.

The courts have justifiably ordered higher amounts on several occasions depending on fathers' financial ability. Yet maintenance awards are hardly sufficient to cover the child's needs. The problem is compounded by the fact that the court can only compute the quantum of maintenance payable from the father's proven wages and/or income generally. As most people's "official" incomes are low, maintenance orders are generally low. Consequently, most single women with young children, irrespective of whether maintenance is sought and awarded or not, live in abject poverty especially in urban and semi-urban areas where the subsistence economy is non-existent. They further become a burden on their relatives who have to support them and their children. In addition to insufficiency of maintenance rates, women tend to be paid irregularly and their collection process becomes a nightmare. Maintenance orders are discharged on the occurrence of one of two things. One is the remarriage of the mother. Secondly, if the mother who was married and living apart from her husband, resumes cohabitation with her husband.

It is submitted that this is unfair to the child's welfare and also to the mother. It punishes the child for its mother's lawful action and exercise of a human right to form a family. It also prejudices the mother's marital status for life. For she has to remain a single parent to earn maintenance for the child(ren) from the father or carry the child as a burden to another marriage or else send it away to generous relatives, if any.

INHERITANCE LAW

The law of inheritance in Tanzania is governed by different laws of succession. These include Customary, Islamic and Statutory laws. All

of these laws provide for both testate and intestate succession. Two particularly connecting factors in each of these legal systems are ethnicity and religious affinity. Where there is a conflict of law between Customary and Islamic Law, the courts have adopted a mode of life test. For Africans in rural areas it is assumed that Customary law applies to them unless the contrary is proved.¹²

Regarding African Muslims the applicable test is the intention of the deceased. When an African is also a Muslim, there is a problem of determining which law applies between Customary Law and Islamic Law. The test which is used in making that choice is the intention of the deceased.¹³ Consequently, the presumption is that Islamic Law applies to the distribution of their estates unless a contrary intention is proved.¹⁴

In conclusion therefore it can be said that either Customary or Islamic Law applies to the distribution of estates of African Muslims who die intestate depending on the one that dominated his/her life. In case of testate succession the will would be followed unless challenged by any of the intended or would-be beneficiaries; in which case the mode of life test would apply.

Statutory law, i.e. law enacted by Parliament of either the colonial or post independent state applies to the rest of the Christians (to whom Customary Law does not apply) and all those of European origin. Statutory law includes the Indian Succession Act, 1865 and the Non-Christian Asiatic (Succession) Ordinance, Cap. 112. The Indian Succession Act may be seen as codified English common law. It is concerned with the deceased's immediate dependants. It is inclined towards more egalitarian principles of distribution among the survivors without distinction on the basis of gender among the children of the deceased, unlike Customary and Islamic Laws, for example. However, this law is rarely used in the country particularly among Africans.

The Non-Christian Asiatic (Succession) Ordinance Cap. 112 is applicable to, as its title implies, non-Christian Asians. It provides that the law applicable in these cases will be "personal law" such as Hindu Law, Islamic Law, etc. Like the Indian Succession Act, this law

¹² See Judicature and Application of Laws Ordinance, 1961, Cap 453, section 9 (1). Also Innocent Mbilinyi, deceased. (1969) H. C. D. 283, George Kumwenda vs. Fidelis Nyirenda (1981). T. L. R. 211 and Abdallah Shamte v Mussa (1972) H. C. D. 9.

¹³ (Administration Small Estates) Ordinance, Cap. 30 section 19 (1) (a) and case law.

¹⁴ Hussein Mbwana vs. Amiri Chongwe. C. A. No. 1/1963 (T). Re: The Estate of the late Suleman Kusundwa (1965) 1965 E. A. 24 and In the Matter of the Estate of the late Salum Omari Mkeremi (1973) L. R. T. No. 30.

is rarely used in the country even by the community it is intended to serve.

The laws which apply to the majority of the people in inheritance is Customary Law and the Probate Administration Ordinance.

Customary Law

Customary Law (rules) relating to inheritance is generally contained in the Customary Law (Declaration) Order 1963 (Government Notice No. 436 of 1963). This is essentially codified customary law as noted above. However, GN 436/63 applies to patrilineal ethnic communities only, which constitute 80 per cent of the Tanzania society's diverse ethnic formations. Thus for the matrilineal communities which are the remaining 20 per cent, the unmodified customary law rules remain in force and are subject to proof by the party relying on them.

Land governed by the GN 436 falls into three groups: self acquired land, family land and clan land. Certain rights and obligations flow to individuals on the basis of this categorization. Succession and ownership rights depend on the status or category under which that land was held by its previous owner. Women's rights under these concepts are also variously affected.

In patrilineal communities of Tanzania as codified in the Customary Law Declaration Order, (CLDO), No. 4 of 1963 clan or family land is protected against alienation outside the clan or family. Daughters are not entitled to inherit land on the assumption that they do marry away from their parental base. An exception is made in default of a male heir but even then alienation by sale and bequeathal is restricted (Rule 20). It is feared that women will transfer land outside the clan or family through marriage. Therefore, the need to protect group (clan) land has been unduly applied to the prejudice of women heirs.

In matrilineal communities there is also a male inheritance system. Male heirs inherit the property of their maternal uncles, not the property of their mothers. Daughters are designated to inherit the land of their uncles, not that of their fathers. Although widows have limited usufruct rights under the CLDO, in both tradition and current practice they are treated differently in various communities. In some societies (e.g. Kagera) there is a strong tendency to dispossess widows unless they submit to being inherited along with the property of their late husbands by the deceased's clansmen or become dependent on their children. In other societies (e.g. Maasai, Chagga) widows are entitled to the homes of their husbands for the rest of their lives and to being custodians of the share of inheritance of their sons, until the sons take over their property.

In mixed marriages, away from centres of customary law practice, widows of propertied husbands are liable to exploitation on the pretext that they have no rights to the property of their late husbands. Relatives of the late husband confiscate all property in the name of customary law.¹⁵

Islamic Law

Islamic Law of inheritance is applicable through the Judicature and Application of Laws Ordinance, JALO, Cap. 453 which empowers the courts to apply the rules of Islamic law to members of the African community who follow Islamic Law in matters of marriage, divorce, guardianship, inheritance, successions, *wakf*¹⁶, etc. However, Islamic law is applicable with the qualification that a member of a native tribe must show the intention that at the time of his death Islamic law should apply.

Islamic law is founded on the Quoran. The general rule is that a Moslem cannot by will dispose of more than 1/3rd of the surplus of his estate after payment of funeral expenses and debts. Dispositions of the 2/3rd of the estate must follow the Islamic principles of intestate succession.

Although the rules of Islamic Law of intestate succession provide for unfixed shares of females, the practice tends to leave such females unprovided for.

Thus in contrast to women's full ownership and management rights, inheritance rules continue to discriminate against women. This discrimination manifests itself in the disproportionate shares generally awarded to men and women. As the Law of Marriage Act does not apply to inheritance, it does not supersede Customary Law (Rwebangira 1990). Thus the discriminatory Customary Law continues to apply to succession matters to the detriment of women and the communities that depend on them. The manifestation of this detriment is illustrated in women as daughters and as widows.

The effect of Government Notice No. 436 on inheritance briefly stated is that daughters cannot be main heirs unless there are no male offspring. If there were they could only inherit in the third degree

¹⁵ See Women and Law in East Africa (Tanzania). Pilot Study on Women and Inheritance in Tanzania. Research Report presented at the Regional Workshop, Kampala, 22–25 February, 1995.

¹⁶ *Wakf* or *Waqf* has its origin in Arabic and is used in connection with Islamic Law of inheritance here. It means the tying up of property in the ownership of God and the devotion of the property for the benefit of human beings. There are two kinds of *wakfs*: Public *wakf* is a dedication of the property for public purposes, e.g. the maintenance of a mosque, orphanage etc; private *wakf* is for the benefit of the settler's family and descendants (Mogha 1987).

after the eldest son of the main house and all other sons. Until 1989 when the High Court ruled that a Customary law Rule 20 barring women heirs from disposing of clan land by sale while men could was discriminatory and therefore unconstitutional.¹⁷

Widows

As widows women are even more vulnerable. They do not have inheritance rights in their own right except through their children. Rule 27 of the Customary Law Declaration Order, CLDO, 1963 provides that "a widow has no share of the inheritance if the deceased left relatives of his own clan; **her share is to be cared for by her children just as she cared for them**" (emphasis added). As for the children, their rights depend on the status of their mother to some degree. The deceased's eldest son by his most senior wife is heir in the first degree and inherits a third of the land. All the other sons, regardless of the seniority of their mothers, are heirs in the second degree which entitles them to something between a tenth and a fifth of the land. All the daughters, the seniority of their mothers notwithstanding, are heirs in the third degree and share among themselves whatever remains. The eldest daughter of the first house will be the main heir if there are no sons. The widow can inherit only when there are no offspring and no male relatives, but this situation is very rare.

Residence of widows

Rule 66A provides as follows (translated from Kiswahili):

A widow has a right to choose any relative of the deceased and live with him as her husband or she may claim the right to remain with her issue in a house of the deceased, and thus become one of the deceased's kinsfolk.

Here again we see the law tying a woman's rights to those of the children. Moreover, this status is rife with more practical problems for widows such as when there is more than one widow, this invariably brings conflict in practice. But even more vulnerable are widows who do not have a male offspring and/or are childless. The tying of a widow's rights to that of the children's under Rule 27 of the CLDO, 1963 brings practical conflicts in real life such as in the cases of polygamous marriages, childlessness or when the children are daughters. Children have diversely different rights under the same rules in regard to inheritance. Since this is not covered by the Law of Marriage Act, it is the customary law of the land which is applicable.

¹⁷ In Bernado Ephraim vs. Holaria Pastory and Gervas Kaizilege. Civil Appeal No. 70 of 1989.

In a polygamous marriage, a widow is at a disadvantage if she has daughters only. Daughters cannot inherit while other clan members are alive. She may have contributed the most to the survival of the family and acquisition of assets. Yet her property rights are not secured unless she has a son(s) or there are no other existing or former wives, dead or alive, with sons.

For example, in the case of Saidi Kasisi vs. Melensiana Kasisi the appellant's mother was the most senior wife of his deceased father. His mother died while he was very young and he was left in the care of his stepmother, the respondent's mother. The stepmother did not bear any sons, but she had three daughters all of whom were married including the respondent. At the death of his father, the appellant, now heir, moved to evict the respondent's mother who was now very old. There was supposed to be a will protecting the widow's right to remain in the house and use part of the *shamba* but the court found that it had not been sufficiently proved. The respondent daughter Melensiana brought proceedings on behalf of her old mother to resist eviction. The case went on appeal from the primary court, to the district court and finally the high court. It was finally held that the case should be referred back to the clan council as per custom. The appeal was dismissed.

This has implications on the widow's old age security. Even if the clan council allows her to stay in the matrimonial home for her lifetime, she would be a dependant on the heir. It would also be difficult for her to attract younger relatives to take care of her (except her daughter's children, if they have not been urbanised and the children as well as their husbands agree to it). This is because she cannot pass on this property to anyone on her death. The position would still be the same even if the appellant was not there, the land would revert to the deceased husband's clan. This is another aspect of widows' old age security. It is impoverishment whichever way one looks at it. It seems to penalise women for overstaying in marriage 'until death does them part', denies them retirement benefits, rewards undeserving relatives while at the same time rebuking those who have acquired enough property to attract greedy relatives. In the case discussed above, the appellant could make such care arrangements for the widow and her dependants difficult by imposing unreasonable conditions, even if only to scare them away.

Widow's right of residence

We have seen that a widow has a right to choose one of her children and reside with him (or her) in the house of the deceased. In the case

of *Scholastica Benedict vs. Martin Benedict* the Court of Appeal confirmed the legality and force of this customary law rule.

In that case the facts were that a man died intestate leaving two wives and 10 children. He had nine children with the senior wife and one, a daughter with the junior wife. At the time of his death he was living with the junior wife in a modern house in Bukoba township which he also owned. The senior wife lived in one of the other houses in the village.

The deceased left substantial property including motor vehicles, farmland, cattle and houses. Three administrators were appointed and the property distributed in accordance with Haya customary law. The crux of the case was that the modern house in which the junior wife had resided with the deceased husband was allocated to the senior wife's son by the administrators. The junior wife refused to hand over the house to her stepson. Her grounds for refusing, were, among other things, that the administrators erred in depriving her of the matrimonial right of residence in the house of her deceased husband. It was held that her claim could not succeed since her matrimonial right of residence was under customary law contingent upon her right to live with her children in a house of the deceased husband. Quoting Rule 66A the Chief Justice had this to say:

... it follows that a widow who elects to reside with her issue, elects where her issues are entitled to reside by the rules of inheritance.

The appellant widow was ordered to leave the matrimonial residence and live with her unmarried daughter in the farmland (*shamba*) allocated to her. Sounding out the decision to a group of Tanzania women researchers at the University of Dar es Salaam, they thought the decision was in line with women's rights because it vindicated the older woman's property rights, albeit through her son. Moreover, the appellant widow was not a young town woman as such. In fact she had been a widow before and her child in the last marriage was a daughter. When the case was finally settled by the Court of Appeal of Tanzania, the widows and their children had been in and out of several courts for seventeen years over the same house.

The childless widow

A childless widow is entitled to a twentieth part of one half of movable and immovable property for every year of married life after the property has been divided into two equal parts and the debts of the deceased have been paid. She would enjoy user rights in land, half of the perennial crops and right of residence until she remarries or

dies, in which case all the unmovable property would revert to the deceased husband's family.

Here the share of the childless widow is not counted as part of her husband's estate. This leniency is apparently meant to comfort and protect the childless widow. It is probably based on the consideration that it would take a very special marriage relationship to remain monogamous in the face of social pressure to produce a heir. In practice, however, such marriages are very rare. The husband would with or without a wife's consent beget children through polygamy or adultery. In some communities such as the Bajita, Bakerewe and Bahaya, the barren wife is likely to bring her sister or niece to the family as co-wife, to beget issue(s) in order to protect her property interest. Although such issues are not technically her children, there is a trust in the Kiswahili proverb which says that "The devil that knows you does not eat you whole". Kinship support here is expected to take care of the childless widow.

A childless widow, though, whose husband left no heir is likely to be labelled a witch. Such neglect and mistreatment of widows is counterproductive and bad public policy. For in terms of public policy, it would seem to encourage divorce. It does not make sense for a divorcing wife to expect division of up to 50 per cent and a widow to get nothing. Would this not leave women with one rational choice of ending marriage by divorce?

The enduring wife looking after a bed ridden husband, sometimes with little or no help from his relatives, has to leave everything or rely on the good conscience of her children if she has any (Rwebangira 1993:34).

Indeed this is bad public policy. For how can people give the best of themselves in the family and community if they are apprehensive of being robbed of the fruits of their labour at any time should their husband(s) die before them?

Having male children is not necessarily a guarantee of equitable treatment and security for a widow. Instances of mistreatment of widows by their own sons¹⁸ and stepsons¹⁹ have been reported in different courts. As we shall see below, the courts have invoked the bill of rights and international human rights instruments and improved a woman's inheritance rights as a daughter. There is still need for further improvement on women's bequeathal rights and in

¹⁸ See *Drosta Francis vs. Faiko Francis*, Katoma Primary Court Civil Case No. 1 of 1988.

¹⁹ See *Paschaziah Bukiyo vs. Samuel Daniel*, Bukoba Urban Primary Court Civil Case No. 43 of 1990.

particular widows rights of inheritance, all of which encourage and perpetuate the development of poverty among women.

LAND LAWS

All land is public land in Tanzania, owned by the President in trust for the whole nation. There is therefore no freehold form of land tenure in Tanzania. Holders of land can only have leaseholds and compensation is limited to unexhausted improvements affected on the land. This is different from Tanzania's East African neighbours, i.e. Uganda and Kenya. The difference lies mainly in Tanzania's history dating back to the 1920s when then Tanganyika was a Mandate under Britain after Germany renounced all rights over her colonial possessions including German East Africa²⁰ after losing the First World War.

Under British rule, Tanganyika was governed under a Trusteeship Agreement between the British Government and the League of Nations. The "B" Mandates as the Trusteeship Agreements applicable to Tanganyika, the Cameroon and Togoland, were known, provided as far as land was concerned in Article 8 as follows:

In forming laws relating to the holding or transfer of land and natural resources the administering authority should take into consideration native laws and customs, and should respect the rights and safeguard the interests both present and future of the native population.

In order to fulfil their obligation under this agreement, the British introduced a legislation based on the Land and Native Rights Ordinance of Northern Nigeria (James 1971:18). The local statute came to be known in Tanganyika as the Land Ordinance, Cap. 113. The effect of the Land Ordinance was to declare the whole of the land, whether occupied or unoccupied, to be "public lands". This continues to be the position today.

Moreover statutory rights of occupancy are governed by the Land Registration Ordinance, Cap. 334. Customary and Traditional Land tenure however were preserved under the Order-in-Council and the definition of right of occupation of land in accordance with customary law (James 1971:62, 97). Urban lands ceased to be subject to native law and custom upon payment of compensation to the former holders. This land was surveyed and held under either Caps. 113 or 334.

²⁰ This included today's mainland Tanzania, Rwanda and Burundi.

changes will bring head-on collision with the existing customs and religious beliefs as the Commission seems to suggest. Where customs or religious beliefs contradict fundamental human rights the latter should prevail.

In response to the Presidential Commission on Land's report, other agents interested in the issue such as independent consultants, the Ministry of Lands, Housing and Urban Development as well as the Law Reform Commission have refined the issue further.

Tibaijuka and Kaijage have criticized the report of the Commission. Their main criticism is that the recommendations of the Commission cannot bring about fundamental changes in society but rather maintain the *status quo* (Tibaijuka and Kaijage 1994).

Meanwhile, the Ministry of Lands, Housing and Urban Development has issued its own draft of the National Land Policy. The cornerstones of this draft policy briefly are four. One is to centralise land allocation authorities as opposed to the present system which has been blamed for double allocations. The proposed system is to set parameters for allocating authorities from Village Councils to ministerial level.

Secondly, unlike the present practice, foreigners are not to be allowed to own land except as legally stipulated under the National Investment Protection Act (NIPA), 1990 for investment purposes.

Thirdly, the draft national land policy proposes to maintain the present system of public land ownership in Tanzania.

Fourthly, allocating authorities at all levels will give land titles and these titles will bear both husband and wife's names. This draft report was being promoted by the Ministry of Lands through public media such as Radio Tanzania and the Daily News early in 1995. Members of the public have been invited to send their comments to the Ministry. The said Ministry of Lands, Housing and Urban Development and the Law Reform Commission were during 1995 working towards the finalisation of the National Land Policy. When this is finalised it will be tabled before the cabinet for approval. After net approval the Chief Parliamentary Draftsman will be instructed to write a bill which would be tabled in the parliament. If this bill is supported it will be enacted into a law. No progress has been made by the end of 1995. It is hoped that the end of the General Elections in November, 1995 will free the political climate and give the Phase 111 Government sufficient clout to tackle such long term burning issues. Thus the long awaited land bill has already come a long way but it still has a long way to go before it can become the law of the land. If passed as proposed particularly with regard to joint title ownership,

the bill has the potential to alleviate women's poverty and encourage them to be investment oriented in the matrimonial property. It is not clear whether the implications of divorce and polygamy have been fully considered. It was noted that women are generally poorer than men. Too few laws have been enacted to reverse this trend. Thus exploitation came out in sharp relief in the practice of laws relating to marriage such as division of matrimonial property on divorce and also on widowhood. It was noted that although the LMA sought to correct this anomaly by specifically superseding Customary and Islamic laws in practice the latter still influence attitudes towards women with adverse effect. Consequently marriage continues to encourage women's dependency on men and adult children which in turn generates a vicious circle of poverty among women.

Besides handing over women's economic entitlement to men, the practice of laws governing custody and maintenance of children also contributes to keeping many women in suspense contemplating divorce, and scared of plunging into abject poverty and isolation. The lack of effective methods to collect maintenance payments puts an undue burden on poorer single or divorced/separated women who have to struggle to raise families alone.

The law of inheritance, however, is a contradiction in terms. It is unbelievable that in this day and age we still have a law that says that a widow has a choice between three evils, to be inherited as a wife, or go back to her people (who are these ?) and to live where her children have decided, all of which require her to be a dependant irrespective of the number of years she has lived with her deceased husband and contributed to the family wealth. This kind of law does not only condemn women to greater poverty in old age, it is counterproductive as it robs them of the moral strength to think beyond subsistence. What a wasted resource! To reverse this trend the following are some of the recommendations on possible actors. These are summed up in the fifth section of this report.

Significant Legal Changes in the Last 20 Years and Their Impact on Poverty

INTRODUCTION

This section deals with a review of some of the laws that have been enacted in the last twenty years, which laws had a gender orientation and which in my view had or could have had an impact on women's poverty given their context.

LEGAL CHANGES

The index of ordinances and Acts indicates that many laws have been enacted and/or reformed between 1975 and 1995. For example, in that period alone 351 new laws have been enacted.²² Moreover, only 9 among these laws have had gender based implications or impact on poverty. These laws with gender and poverty alleviation implications include: **the 5th constitutional amendment; the Villagisation Act, 1975; the Penal Code; the Employment Ordinance, Cap. 366; the Education Act; 1978 the Day Care Centres Act, 1981 and the ratification of the Convention on the Elimination of All Forms of Discrimination against Women.**

The first section deals with each one of these legal changes and their likely impact on poverty alleviation among women. The second section will focus on efforts for changing the law.

The villages and Ujamaa Villages Act, (Registration, Designation and Administration Act No. 21 of 1975, hereinafter called the Villagisation Act)

This Act provided for the registration of villages, the administration of registered villages and designation of Ujamaa villages. It does not deal with the rights of people in their respective villages. Moreover, each person of the apparent age of eighteen years ordinarily resident

²² See Index of Acts.

in the village was eligible for membership of the all powerful Village Assembly. This meant that women, irrespective of their marital status were automatically members of the respective villages if they resided in designated villages. Work in these villages was to be on the basis of both communal and private farming. Both men and women were eligible to work on communal farms and receive remuneration according to their labour inputs. However, in a study I carried out with Marja-Liisa Swantz in 1976²³ in Kilimilile, one of the Ujamaa Villages in Kagera Region, women still carried the responsibility of cultivating and caring for the private (family) farm which reduced the time they could spend on the communal farms. They were not paid for their work on the private (family) plot. However, in another study carried out at the same time in Lugaze also with Swantz in the same region, it was found in both Lugaze and Kilimilile that more women than men participated actively in communal work. Swantz concludes that this was because women were less used to private ownership and also welcomed the opportunity to earn cash on their own. She notes that in this respect single women were more active than married women who were frequently interrupted by their husbands "whose only objection to communal work was their wives working on it" (Swantz 1985).

This Act definitely had the potential of having an impact on women's poverty situation. However, the impact was more on migrant men and unmarried women. In areas where land was scarce such as Kagera, migrant labourers from neighbouring countries of Rwanda and Burundi enthusiastically settled in these villages where land was distributed free of charge and, were in fact able to marry local wives. One can rightly argue that as far as class formation is concerned this Act and the policies behind it were the point of departure in Kagera particularly in Bukoba and Karagwe Districts as far as rural class formation among the peasantry and social status of migrant labourers from neighbouring Rwanda and Burundi were concerned.

Nonetheless one notes that the Act did not specifically address gender inequity in its body. In fact it is surprising that there is no requirement for gender representation in the composition of the elected village council, only the Party Chairman and Secretary had automatic membership to the Village Council by virtue of their positions under section 10 (1) of the villagisation Act.

²³ See M-L. Swantz, *Women in Development: A Creative Role Denied?* C. Hurst & Company, London, St. Martin's Press, New York 1985.

5th Constitutional Amendment, Act No. 15 of 1984

This Act amended the 1977 Constitution of the United Republic of Tanzania by adding a Bill of Rights. This was a significant step in the areas of human rights for both men and women. Hitherto, the contents of the bill of rights—freedom of speech, movement, property ownership, etc. had been enshrined in the preamble of the ruling (and then only) party, CCM. The courts had difficulty in interpreting the Party Constitution as bestowing any legally enforceable rights. Thus this enactment was a landmark legislation and timely as the era of multipartyism dawned and the CCM Constitution no longer formed the “spirit by which laws were to be interpreted” or read into the intention of the legislature.

The Bill of Rights is provided for in section 13 (1)–(4) of the 1977 Constitution as amended by Act No. 15 of 1984 which provided as follows:

1. All people are equal before the law, and have rights, without any discrimination, of equal protection and treatment before the law.
2. The rights of citizens, responsibilities and interests of individuals and community will be protected and decided by the courts of law and other state organs as provided by or according to law.
3. It is prohibited for any law enacted by any authority of the United Republic of Tanzania to impose any condition which is discriminatory either in fact or by implication in its application.
4. It is prohibited for any person to be discriminated by anyone or any authority whose authority is derived under law or in the discharge of duty or activity of the state or Party and its organs.
5. For the purposes of the interpretation of this section the word “discrimination” means to satisfy a need, right or other requirement of different people on the basis of their nationality, tribe, place of origin, political opinion, race, religion or station in life whereby certain people are treated or seen as weak, inferior and impose sanctions or conditions or people of another category are treated differently or given an opportunity or advantage not within the Bill of Rights.

(Translation from Kiswahili to own English).

To give the Bill of Rights greater impact by correcting past and existing injustices, Parliament also enacted another law to make provisions upon the amendment, for matters connected with the amendment known as the Constitution (Consequential, Transition and Temporary Provisions) Act, No. 16 of 1984 which was to be read as one with the said Fifth Constitutional Amendment Act, 1984.

These are blueprints against discrimination of any person including women. In fact it has paved the way for human rights litigation in recent years. It also gave an opportunity to judges who were already disenchanted with customary law rules that bar women heirs from disposing of clan land by sale while males could declare customary law rules unconstitutional. The position was elegantly articulated by Mwalusanya J. of the High Court, at Mwanza Registry, he held that rule 20 of the Customary Law Declaration Order, 1963 is unconstitutional because it discriminates against women. The judge relied on the Bill of Rights above. Invoking the reception clause ins. 5(1) of the constitution (Consequential, Transition and Temporary Provisions) Act, 1984, and other international human rights instruments which the United Republic of Tanzania has ratified he declared discriminatory Customary Law rules unconstitutional.

Moreover, the definition of prohibited discrimination handed down in 13 (5) above does not include "gender" or "sex". (Although one can dismiss the omission as an oversight, it is tactical to note that "sex" discrimination prohibition is missing in most constitutions of East Africa and SADC countries except Uganda, South Africa and probably Mozambique.)

The Penal Code, Cap. 16 of the laws

The Penal Code, which is the law defining offences and penalties for criminal conduct has been amended at least twenty two times in the last twenty years. Moreover, apparently only one amendment among these has been of special significance to women. This was the amendment of section 136 of the Penal Code dealing with defilement of girls under 14 years Act No. 19 of 1992. The amendment adds subsection 4 which provides as follows:

- (4) Where any person is convicted by a court of an offence under this section, the court shall sentence such person to a term of imprisonment which shall not be less than twenty years.

The legal position before this amendment for any person having carnal knowledge of any girl under the age of fourteen years or attempting to have carnal knowledge of such girls was liability to life and fourteen years imprisonment respectively, both with or without corporal punishment. There was an outcry at increased incidents in defilement of girls as young as one year. The matter was brought to the fore with a report by a school teacher of a self-styled "sugar daddy" named Maumba in Magomeni area who had habitually defiled a series of school girls. The matter ended up in a sensational

trial.²⁴ The practice before this amendment was that offenders often got light sentences. Maumba for example was sentenced to five years imprisonment.

Employment Ordinance, Cap. 366 as amended by Act No. 91 of 1975
The Employment Ordinance was amended by repealing and replacing sections 25A and B of Cap. 366. The new section provided for paid maternity leave of 84 days irrespective of marital status. Following this enactment, an amendment slip by way of circular was issued to all government departments and parastatal organisations.²⁵ The circular became effective on 1st May 1975.

Briefly, the amendment provided that a female officer certified as pregnant would be entitled to paid maternity leave of 84 days which may be taken once at any time between the commencement of the seventh month of pregnancy and the day following the termination of pregnancy by a live delivery. The said maternity leave was to be granted only once in three years, starting from the date on which the officer completed her last paid maternity leave. The three year limitation was to be waived if the child born to such officer died within 12 months of its birth. Mosha traces the historical development of maternity leave protection for female employees to the time of independence in 1961 when there were very few women in formal employment.

Before this amendment there was no legally sanctioned paid maternity leave. Some employers applied colonial general orders which provided paid maternity leave of 90 days but only to married women (Mosha 1988).

The passing of this law was considered a landmark and certainly Tanzania was among the pioneering states in Commonwealth Africa. There was much more open opposition and heated debate in the National Assembly for this bill than for example, for the Law of Marriage Act, 1971. The objection to the amendment to the Maternity Leave amendment was that it would encourage promiscuity if the protection and benefits were extended to unmarried women. The Umoja wa Wanawake Tanzania (UWT) a National Women's Organisation affiliated to the ruling party, CCM is credited for having led this bill to final enactment as it is for the Law of Marriage Act, 1971.

²⁴ See Table 6.

²⁵ See staff circular No. 1 of 1975 dated 20 September, 1975.

Surprisingly, the latter law had much further reaching implications than the former.²⁶

Education Act, No. 25 of 1978

The Education Act was enacted in 1978. One of its most significant accomplishments was that it made Primary Education compulsory and universal. It made possible the implementation of the government policy of Universal Primary Education (UPE). This was a positive development for women for equal access to primary schooling was achieved as a result. For example, primary school enrolment for girls was 50 per cent in 1986 and 49 per cent in 1991 (Puja and Kassimoto 1994:55). It is an offence under this Act, to cause a child between seven and thirteen years of age who is enrolled in school to drop out of such school before completion of education for which such child is enrolled.²⁷ Thus young girls were especially protected from being removed from school for purposes of arranged marriages and domestic labour.

Day Care Centres Act, No. 17 of 1981

This Act enacted in 1981 paved the way for the establishment of day care centres which are important for working mothers. Nonetheless, it did not impose any obligation on the employer nor did it give any special advantage to women who are renowned care givers for children.

The Act provides for the establishment of day care centres which are any premises, a children's home or a nursery school intended to receive children to be cared for and maintained during day time in the absence of their parents or guardians. The premises can only be operated after registration.

Conditions for registration of premises are contained in section 5 and they include suitability of the premises for the carrying on of a day care centre, that the applicant has sufficient financial resources to maintain the premises, that the premises are provided with necessary facilities, etc.

Registration of premises must be accompanied with prescribed fees (section 6).

Although any person may own a day care centre with the approval of the Minister [section. 7(2)], emphasis is only on persons who are "in proper organisations". As we have already stated most

²⁶ The percentage of women in formal employment remains very minimal.

²⁷ Section 35 and by-laws made by the Minister of Education (4).

women do not have a chance in the ownership of these organisations, except UWT as explained above. The implication is that women are restricted to join or own day care centres [2.7(1)]. The term 'proper' organisation means a voluntary agency, a religious organisation, a cooperative society and any mass organisation established under the party (CCM). If you are not a member in the above organisations the path to own a day care centre becomes very narrow.

Another restriction lies in the qualification for registration of day care centres as enumerated under section 5 of the Act. These qualifications put much emphasis on the financial ability of the applicant. This is a serious hindrance to women as most women do not have the necessary capital to qualify for registration to operate these centres. Therefore, despite its title, the Act did not bestow any special benefit to women either in the work force or as potential operators.

International Human Rights Instruments

Tanzania has been party to several International Human Rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights (ACHPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The government of the United Republic of Tanzania ratified this UN Treaty in August 1985.

The Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) provides a comprehensive guide to actions that can be taken to eliminate discrimination against women. In its 16 substantive articles, the Women's Convention gives: (1) directions on policy and legal measures, (2) affirmative action, (3) sex roles and stereotyping, (4) traffic and prostitution of women, (5) political and public life, (6) international representation and (7) participation, (8) nationality, (9) education, (10) employment, (11) health, (12) social and economic benefits, (13) rural women, (14) equality before the law, (15) marriage and (16) family law.

The instrument was cited by the judge who declared Rule 20 of the CLDO, 1963 which barred female heirs from disposing of clan land unconstitutional (above). The same instrument has been cited in other countries to make landmark decisions.²⁸

²⁸ See *Unity Dow v Attorney General of Botswana*, C. A. No. 4/91; *Sara Longwe v Intercontinental Hotel (Zambia)*; *Abdulaziz, Cabales & United Kingdom*, 94 Eur. Ct. H. R. 1985.

The Regulation of Land Tenure (Established Villages) Act No. 22, 1992

The Act was enacted specifically to provide for the settlement of land disputes which arose after the resettlement of people in registered and ujamaa villages. Those disputes arose because land was allocated afresh to the new occupiers of the villages notwithstanding the interests of people who were occupying those plots of land prior to the Villagization Programme (Operation Vijiji). So this Act was passed with the aim of putting to an end rights in land held under customary land tenure.

The original concern of the legislature seems to have been freeing the land for investors. The original bill was rejected by Parliament after a successful lobby campaign from interested parties including University of Dar es Salaam Faculty of Law lecturers. In its toned down version which was finally passed by Parliament, the law deals with putting to an end the existing disputes which arose from customary land holdings in the process of villagization.

It must be remembered that in most areas, when land is held under customary law it is automatically deemed to be clan land. That is, only male members of the clan have the right to own that particular piece of land in the true sense of the word, with full disposition rights including bequeathal. Women are excluded from direct control /ownership of land.

However, the Regulation of Land Tenure (Established Villages) Act, 1992 which extinguishes rights under customary law was declared null and void by the High Court (Munuo, J.) in Arusha and on appeal to the court of Appeal only those sections which purport to extinguish rights under customary law were declared null and void. Therefore, the fate of rights of women in land is still unknown.

The Cooperative Societies Act, 1991

This Act repealed the Cooperative Societies Act No. 14 of 1982.²⁹ This new Act is comprehensive and accommodates all the amendments to the Cooperative Societies Acts in the history of cooperative societies in Tanzania. The Act is general and encompasses all people who are willing to form a cooperative society regardless of whether the members are males or females. However, the history of the cooperative legislation demonstrates how women's participation in the cooperative movement had not been envisioned. Before this legislation land ownership was a prerequisite for land ownership in a rural co-

²⁹ See section 137 of Cooperatives Act No. 15 of 1991.

operative society.³⁰ This requirement automatically excluded the majority of women who are married in rural areas and attracted many criticisms on that account. For example, Naali, in her paper entitled "Legal Provisions for Women's Participatory in Cooperatives" explains the importance of cooperatives as a means of uplifting women's poverty, ignorance and oppression thus as tools for the betterment of the women's welfare and well being. According to the author women's participation in Cooperative Societies was ineffective and difficult, although on the face of it the law is gender neutral (Naali 1979).

It is consoling to note that land ownership is no longer a requirement for membership of a cooperative society under the new Act. Yet it would have been more consoling if the effect of the new law had been to give women the right to the land which they need to sustain their dignity, status and to uplift themselves, their families and communities from abject poverty.

Despite the change in the Cooperative law, there are still some membership requirements in the new Act which, may act as a hindrance to women to join these cooperative societies in practice. Such requirements include capability to pay fees and acquire shares (section 14 (2)(d)). Although these are reasonable requirements, many women are unreasonably poor. In the absence of state social security benefits, they are dependent on mostly males for most of their cash requirements. It is unlikely that such 'benefactors' see membership investment (by women) as a necessity.

The views of Government officials interviewed for this study were different on this issue. While they agreed that lack of land ownership is a disadvantage to women's active participation in cooperative societies, some thought women did not make sufficient use of food produce (which are generally controlled by women) cooperative societies as opposed to cash crop (which are controlled by men) cooperative societies.

EFFORTS FOR CHANGE IN THE LAW AND IMPACT ON POVERTY

Bills awaiting enactment

According to the Law Reform Commission of Tanzania officials and the Commission's reports, it has prepared and completed several proposals for reform on the Law of Marriage Act, 1971, Prisons Law, and

³⁰ See section 24 (b) of the Cooperative Societies Act No. 8 of 1985. Also the Cooperative Societies Act, 1968 and by-laws made under it, (repealed by Act No. 8 of 1985).

Law on Impact of the Criminal Justice System and public funds. These laws are awaiting action from the side of the Government, before the same can be tabled in the National Assembly for enactment into law. Among these the law most likely to have an impact on poverty alleviation among women is the proposed amendment of the Law of Marriage Act, 1971.

Proposed Amendments in the Law of Marriage Act

It has been proposed that the principle in *Bi Hawa Mohamed vs. Ally Sefu* Civil Appeal No. 9 of 1983 be protected by law rather than leaving it to the discretion of the court as it is at the moment. Hence if this proposal is enacted, a spouse's contribution by way of domestic services will be counted as contribution by joint efforts to the acquisition entitling the other spouse to a share by act of Parliament. If this amendment is passed courts will no longer have the justification of demanding proof of 'tangible' or financial contribution before awarding a wife a share of the matrimonial assets. One only hopes that the percentage accrued to a wife will be fixed by the amendment. This would go a long way towards giving women the confidence and capital they need to invest their labour and genius in the family enterprise knowing that they would not be thrown out as paupers at the end of the marriage, should the same end by divorce.

The proposal for reform under this Act also includes raising the minimum age of marriage from the present age of fifteen years for girls (with parental consent) and eighteen without it respectively, to twenty years. Under the Law of Marriage Act, marriage below the minimum age is illegal and null and void.

This proposal would, also if enacted into law, at least make a statement that girls are not just expected to be vehicles of production and reproduction for their communities but that they are also to be fully developed physically and mentally, receive more education and therefore acquire a broad based earning capacity. Delayed marriage among women has all these advantages. Studies have indicated that women who marry young tend also to have lower self-esteem and hence be less likely to participate in any meaningful decision making at all levels including the household.

It has been argued that raising the age of marriage does not change people's practice automatically and that such a law cannot be strictly enforced. Some of the reasons being that many parents are genuinely concerned that delayed marriage may lead to pregnancy out of wedlock by their daughters. Others argue that few girls are married 'legally' in the strict sense of the word.

Furthermore others have argued that such limitation would interfere with the cultural practices of some communities such as those which practice initiation rites.³¹

It remains to be seen what arguments will surface, if at all when the bill is finally tabled before Parliament. Moreover, the time has come when it is no longer viable to hide behind 'cultural practice' and safeguard 'customs' at the expense of women.

Another proposed change under the LMA concerns presumption of marriage under Section 160 of the LMA. At the moment, a woman who has lived with a man as husband and wife for a minimum of two years is entitled to division of property at the end of the relationship, as if the two had been formally married. Moreover, this seems to have created confusion as to whether or not this creates an alternative form of marriage particularly when one or both of the parties do not have capacity to marry under LMA such as when there is an existing marriage.

Laws under review for amendment

According to the Law Reform Commission, they have already identified another set of laws for proposing amendments. These laws in the pipeline include some of the 40 laws identified by the Nyalali Commission, violence against women, victims of accidents under the Road Traffic Act and paralegals. Among these the work likely to have gender specific relevance for women is the one on violence against women.

A background paper on women and violence has already been prepared and adopted by the said Commission. The necessary data has been compiled and a discussion paper circulated.³² Public hearings have been conducted to get people's views. They started their work in communities where the problem of violence against women is prominent but have finally conducted their hearings at all nine High Court Centres in the country including Mbeya, Dar es Salaam, Tanga, Arusha, Dodoma, Mwanza, Tabora and Mtwara. In these hearings the Commission interviews women working in groups such as economic groups on their personal experiences as well as other members of the public. State intervention in curbing violence against women can only have a positive effect on women's social-economic status which is directly linked to their poverty. For example, the

³¹ See the Discussion Paper on Law of Marriage Act, Law Reform Commission, 1988.

³² The Law Reform Commission of Tanzania, Criminal Law Reform Project on: Criminal Law As a Vehicle for the Protection of the Right of Personal Integrity, Dignity and Liberty of Women in Tanzania: Need for Reform.

former Minister of Home Affairs' statement that wife beating was against the law and subsequent instructions to the police to take women's complaints of domestic violence seriously.

Conclusion and Recommendations for Change

CONCLUSION

Poverty is a menace which has refused to go away. Tanzania recognised it as an enemy that needed to be fought right after independence (Nyerere 1962). But we seem to have become poorer particularly over the last decades according to international poverty standards. Moreover, many gains were registered in social and cultural gains such as the evolvement of a national culture transcending our 120 ethnic boundaries. The promotion of Kiswahili assisted to forge this cultural miracle equalled nowhere else in Africa. The promotion and development of Kiswahili has been our gift to the world, especially African countries. Literacy in Tanzania rose to one the highest levels in Africa. So did access to safe water and sanitation and health services particularly up to the late 1970s. There is evidence that the latter developments have been eroded in the face of economic decline. This paper has attempted to argue that in spite of the external forces contributing to our poverty, we can make a difference if we harness all our internal resources, put our "house" in order and move forward together as a community by applying some home-made remedies. One of such remedies is to give women a stake in the prosperity of their families, community and nation at large i.e. encourage them to think beyond subsistence.

RECOMMENDATIONS FOR CHANGE

Expand Legal Services for Women

Legal assistance through legal advice and defence should be expanded. Given the present concentration of this service in Dar es Salaam and the limited impact this service has had so far, a national programme is in order and timely. Such a programme could have two broad objectives. One, to encourage women to claim their rights which are provided for under the country's laws. Two, to identify test cases which would challenge courts to decide on borderline cases, thus further developing the law on women's legal status. The

key actors here would be NGOs, practising lawyers, the Government and donors.

Effective mobilisation of the media

Lack of sufficient information and communication are among the formidable obstacles towards advancement of women's social status. Concerning this one possible strategy in attempting to alleviate poverty situation of women would be massive information and communication campaign. To start with, communication—facilitating—communication like cultivating habits of reading and that of listening to the radio as well as participating in meetings could be emphasized. In this way women could get more informed and, with time, may become implanted with the sense of self confidence to use the chances available, e.g. by political pluralism, to liberate women's minds politically including contesting seats in national elections.

Target specific legal changes

Assessment of earning capacity on divorce

We have seen that the emerging court practice when a matrimonial home is contested is at most to give both husband and wife an equal share of value of the home, and give each the option of buying out the other spouse's share. Often the husband buys the wife out. Courts could be encouraged, even challenged to adopt a more innovative approach. They could look at the expansion of an individual spouses' earning capacity, for example. Which of the two or more (in the case of a polygamous marriage) has expanded or shrunk in relation to the other. Often it is the wife's earning capacity that shrinks and the husband's that expands. Thus buying out women's share by giving her money is not enough for her even to guarantee her the same standard of living. She may not be able to use her share to build another house. It would help such women if they retained the matrimonial home, without having to compensate the husband for his share. Alternatively, the court could order the husband to provide such wives with alternative accommodation. It is true that many men are also poor, but a good number of those who divorce in court are not. Poverty alleviation among women can be one of the themes under the Legal Services programme.

Involve other lawyers especially from upcountry

The reasons for the concentration of legal aid services in Dar es Salaam may be many but the main one may be that there is a con-

centration of lawyers in Dar es Salaam and especially human rights activists.

Moreover, there are at least 74 lawyers as of 1993 practising out of Dar es Salaam, some of whom are very good lawyers although they may not be inclined to offer free services to women's human rights causes. The programme can identify such people and offer to pay a flat basic expenses fee to the lawyer, such an initiative could produce a national character effort, diverse in outlook unlike the present situation when landmark cases originate from urban areas. Further it utilises the expertise of experienced lawyers all over the country unlike the present practice in legal aid clinics, staffed by junior lawyers who use them as launching pads for their own future practice. This is not to say that junior lawyers in Legal Aid Centres do not have a significant role to play in public interest laws such as gender bias, indeed they have a role in identifying the cases and trends as well as sensitizing themselves and the general public on these trends. Moreover, the test case strategy requires the collaboration of experienced lawyers for effectiveness. The programme can then organise regular seminars among all actors in the programme for sharing experiences, forging strategies and boosting morale.

An additional advantage of such a programme is that it can take off within a short time with minimum infrastructural investment. The only money needed would be the flat cost fees for lawyers which need not be at a commercial rate.

Test case strategy

We have seen that laws change very slowly, especially those benefiting women. Another effective way of realising desired change faster is the test case strategy. Once a desired change has been agreed upon, "good" cases and lawyers can be carefully selected, to challenge the courts for best results. Mobilisation is essential for this strategy and that makes it attractive because it necessarily addresses community attitudes. This way, Government bodies and NGOs can have a fruitful cooperation in the process. The mobilisation process can also give significant moral support to test case litigants who would then serve as role models for others to either ameliorate or modify negative attitudes towards such women.

Utilisation of Government bodies

These are mainly government ministries and specific departments.

The Ministry of Community Development, Women's Affairs and Children

This ministry strives to raise public and government awareness on gender issues through specific programmes from national to grass-roots level. In its annual budget there is a vote for this purpose although both the programmes and the budget are not yet sufficient.

Furthermore this "women's ministry" collaborates with donor agencies and other government bodies to study and monitor different circumstances affecting women's lives and tries to improve them. Such collaborative efforts include availability of safe and accessible water, environmental friendly sources of energy and the credit scheme operated through the ministry's own community based workers in pilot regions. There is a big potential in the Community Development Officers (CDOs) and Community Development Assistants (CDAs) who work under this ministry and are spread out all over the country for the purposes of spearheading development activities. Furthermore, the ministry has fifty five (55) Folk Development Colleges (FDC) throughout the country which conduct training on community based development activities. These facilities do not seem to be utilised to their full capacity at the moment.

The Ministry also strives to monitor, prepare and maintain data and statistical information concerning trends of various shortfalls and achievements by women.

The Ministry of Justice and Constitutional Affairs

Through the Law Reform Commission, the Ministry studies the current laws and makes appropriate amendments some of which are specifically relevant to women. However, some of the proposals submitted to the Ministry in the late 1980s have yet to be tabled in the National Assembly to date although a number of initiatives are underway.

Law of Succession Project

The Law Reform Commission has also been working on the enactment of a unified Law of Succession which could be the beginning of alleviating the current plight of widows. According to the Commission the proposals have been submitted to the Ministry of Justice. One of the proposals on the Law of Succession is that a surviving spouse and parents of deceased get a specific share of the estate including immovable property. Moreover, the immovable property would devolve to the children of the couple or polygamous family. The minister concerned was reported by Radio Tanzania in December, 1994 to have said that the bill for the new succession law would

be tabled in the next (January) Parliamentary Session. Moreover, no such bill has been tabled to date. The Chief Parliamentary Draftsman of the Attorney General's Chambers confirmed that such a bill has in fact not been drafted. It would appear that the enactment of this law at the moment is either not government priority or the public statements are meant to stimulate the general public to be in a state of preparedness for the new bill and communicate with their Parliamentary Representatives on the impending bill. The Chairman of the Law Commission was of the view that the latter was the case. Some members of the Islamic community have already registered their concern and protest on the grounds that the proposed bill should not apply to Muslims as it contradicts the provisions of the Koran.

The Proposed Women's Tribunal

In June 1994, the Ministry of Justice established a Commission with a mandate of looking into the possibility of forming a Women's Tribunal. This Tribunal would, if and when formed, deal with gender specific issues such as violence against women. With the necessary political will, it is feasible to use such a platform to handle pertinent issues related to women's poverty such as wrongful police interference and property grabbing from widows.

Non Governmental Organisations

There are at least five NGOs providing free legal advice, court representation and counselling services to women. These are SUWATA's Legal Aid Scheme for Women, Tanzania Women Lawyers Association (TWLA), Tanzania Media Women Association (TAMWA), Moshi Co-operative College Women Lawyers' Legal Aid Project and the Tanganyika Law Society (TLS). The latter's services are gender neutral but women have benefited from its services for many years.³⁵ Most of these institutions are based in Dar es Salaam with the exception of the Moshi Cooperative legal aid group in Kilimanjaro.

Other Institutions

The Faculty of Law of the University of Dar es Salaam has an active legal aid committee. Some public interest cases of significance to women were won with the assistance of this facility.³⁶

³⁵ The landmark case of Bi Hawa Mohamed vs. Ally Sefu was won with the assistance of the Tanganyika Law Society's Legal Aid Committee.

³⁶ See Martha Wejja vs. Kitwana Kondo, Civil Appeal No. 2 of 1982 and Juwata vs. Kiuta, Civil Appeal No. 29 of 1987.

Political parties

Following political pluralism in 1992 and change of law, new political parties were formed. Some of these parties have "wings" for women affairs and development. The encouraging aspect of these "wings" is recognition of the need to address women's issues. A number of the main parties such as CCM, as mentioned earlier, CHADEMA and NCCR-Mageuzi have such wings. The recently formed but yet to be registered Women's Council of Tanzania (BAWATA) invited all leaders of political parties to present their gender profiles at its maiden meeting in Dar es Salaam in August, 1994. The successful encounter was an eye opener as to the potential of such fora. Such fora could among other things encourage women, the majority of the electorate to think politically about important issues that affect them.

The 1995 General Elections provided the first opportunity to feature the operation of the Election Act, 1985 on special seats for women in parliament. The Act provides in section 36 that not less than 15 per cent of the total members of Parliament shall be women appointed to special seats.³⁷

There are a total of 238 members of Parliament, 186 of whom are CCM ticket, 24 of CUF, 16 of NCCR-Mageuzi, 3 CHADEMA and 3 of UDP.³⁸ Consequently the Electoral Commission offered CMM 28 special seats for women, 4 to CUF, 3 to NCCR-Mageuzi, 1 each to CHADEMA and UDP.³⁹ Consequently there are 37 women MPs all nominated by their political parties and admitted to Parliament without having to win election in their constituencies. There are indications that gender sensitivity or awareness is not one of the criteria on which parties nominate their female MPs. But there is no legal requirement that they should be so. The qualification of MPs are set out in section 66.67 of the United Republic constitution all of which qualifications are limited to categories of MPs, citizenship, ethical status, health and criminal record among others. It is on these legal criteria that the Electoral Commission selects women MPs from the list submitted by political parties.

³⁷ See Article 78 (1) of the Constitution as amended by Act No. 4 of 1992 (8th Constitutional Amendment).

³⁸ The Members of Parliament are constituted as follows: 232 Constituent MPs (elected), 5 members of the House of Representatives and the Attorney General of the Union Government.

³⁹ The latter two had not qualified for special seats but the Electoral Commission offered them seats to increase the opposition membership in Parliament in view of a large CCM majority, according to the Commission's officials.

EXISTING OPPORTUNITIES AND POSSIBLE EFFORTS

Unfortunately, there was not enough time to study the different institutional structures of the different government bodies, NGOs and other institutions, evaluate and assess their capacities and experiences. This is a complete research topic in its own right whereby the views of all concerned can be systematically gathered and analysed.

Moreover, it is obvious that despite gender issues gaining much popularity in recent years, and the increase of NGOs dealing specifically with women's and gender issues generally there is still a gap between government bodies, NGOs and women groups' efforts.

The various efforts are not (sufficiently) coordinated by any of the above structures. As a result the resources devoted to help women are not as productive as it may be expected. Each NGO is carrying out its own projects collaborating with donors without considerations of what might have been done by other bodies on that problem and what were the findings, successes and failures. Various projects undertaken by different NGOs need to be coordinated and registered to avoid repetition.

Secondly, the efforts and benefits of the resultant programmes are not reaching the most impoverished women in the rural areas.

The point has to be brought home that the Government, private sector and the general public should make deliberate and realistic efforts to alleviate the general poverty. Furthermore, sensitization of the international community particularly industrialized countries to the role played by inequitable global economic policies in our continued impoverishment should continue. Moreover, this paper would argue that we have no moral right to expect others to do to us what we cannot do to our own people. For the irony of the matter is that the two operate on the same principle. Changing laws and attitudes is within the country's power and responsibility to do.

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