12 Unlocking gender inequality through judicial training

Insights from Tanzania

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Introduction

The pursuit of gender equality is an intrinsic component of international and national justice systems. In Tanzania, the Judiciary of Tanzania (JoT) is the ultimate authority for dispensation of justice under the constitution (United Republic of Tanzania, 1977).¹ It is inevitably the guardian of laws and societal integrity and therefore critical in the advancement of substantive equality between men and women. In this regard, the JoT's vision and mission as stipulated under its Five-Year Strategic Plan (2015/2016–2019/2020) points to the need to promote equal justice for all. The JoT's Strategic Plan has three pillars, namely, Governance, Accountability, and Management of Resources; Access to justice and Expediency; and Public Trust and Stakeholders Engagement. Under the second pillar, the JoT expresses its commitment to increase access to justice for vulnerable and disadvantaged groups, women and children in particular. Judicial training, aimed at enhancing the capacity of judicial officers in administering justice, is seen as an important tool for attainment of the goals of the Strategic Plan and improving the JoT's transparency and credibility among citizens.

This study assesses gender training in the JoT. The key question for investigation is whether judicial training in Tanzania includes gender awareness programs and if so, to what extent. Before embarking on this question, the chapter discusses, albeit briefly, the conceptual and normative framework underlining gender training, and the state of affairs and justification for gender training in Tanzania. The chapter will analyze the training programs conducted by the Institute of Judicial Administration (IJA), Lushoto, Tanzania and the Tanzania Women Judges Association (TAWJA). The focus of this analysis is to examine what the training programs cover, who participates in such trainings, and the effectiveness of these training programs in addressing gender inequality and enhancing access to justice for all. The last part identifies the gaps and provides recommendations.

Conceptual and normative framework on gender and judicial training

The unique role of courts in advancing equality between men and women has been highly acknowledged in the gender justice discourse. Underlying this discourse

is the proposition that the law adjudicated in these courts is not necessarily a neutral arbiter of disputes or a positive instrument of social change, as it has been deemed to be. Rather, it has historically been a powerful conduit for transmission and reproduction of the dominant ideology, male power structures, and gender inequality (Thornton, 1986). The feminist theorists have maintained that the justice systems all around the world reflect the power imbalances inherent in their society and in so doing, underpin male dominance over women (Banakar & Travers, 2002). Unequal distribution of power and resources between women and men and the public–private divide that is prevalent in almost all jurisdictions exacerbate gender inequality in courts. Because of the public–private divide, injustices against women, such as domestic violence, rarely attract attention, as they happen in the private sphere and are deemed acceptable norms of respective communities. Culture is often given as justification.

In Africa, as in many other parts of the world, the situation of women is dire. Many injustices against women, including sexual assault, often go unnoticed, and the level of impunity is high (Hodgson, 2011). According to the Gender Status Index (GSI), which measures the gender gaps within countries and assesses the extent to which women have the same opportunities as men in education, health, economic empowerment, and access to resources, inequality and women's empowerment still remain among the biggest challenges facing African states (Economic Community for Africa, 2017). In most of the countries, the inequalities manifest themselves in women's limited access to, and control over, productive resources, unequal access to social services and socio-economic opportunities, as well as low representation in politics and decision-making spheres.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations General Assembly in 1979 provides a normative framework to address gender inequality. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination and to achieve substantive equality. The States Parties to the Convention undertake to embody the principle of equality between men and women in their constitutions and to abhor all forms of discrimination against women. One of the notable features of the Convention is its embodiment of the central role of the judiciary in elimination of discrimination and advancement of the quest for equality between men and women.

Article 2(c) of the Convention specifically obliges States Parties to “ensure through *competent national tribunals and other public institutions* the effective protection of women against any act of discrimination.” The specific role of national courts, as exemplified under the General Comment No. 28 of the Committee on Elimination of All Forms of Discrimination against Women, is to ensure substantive equality by upholding the principle of equality in their adjudication and highlighting the inconsistencies that exist between national law, including customary and religious law where applicable.

Emulating this spirit, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol), apart from providing specific guarantees for formal equality, specifically obliges

states to take appropriate measures to ensure effective access by women to judicial and legal services. Article 2 of the Protocol specifically obliges States Parties to (a) embody the principle of equality in their national constitutions and legislation; (b) curb all harmful practices that endanger the health and general well-being of women; (c) integrate a gender perspective in their national policy decisions, legislation, and development plans; (d) take corrective and positive action to eliminate discrimination against women; and (e) support all initiatives directed at eradicating all forms of discrimination against women at the continental, regional, and national level. According to Article 8 and 25 of the Protocol, the States Parties have a responsibility to equip the courts and other law enforcement organs with the ability to effectively interpret and enforce gender equality rights and to protect effective remedy to women whose rights and freedoms are violated.

These two instruments provide a solid normative framework for realization of justice by women. However, the extent to which national courts have lived up to this expectation is debatable. While most States Parties have complied with the obligation to embody the principle of equality in their national constitutions, translation of these embodiments of equality into substantive justice has remained a challenge. In Africa, the situation is dire. It has been reported that there are significant gaps between the provisions of the Protocol, its domestication at the national level, and women's enjoyment of their human rights in practice. Even in countries where the principles enshrined in the Protocol have been domesticated, they are often not enforced, and institutional mechanisms to promote the human rights of women are often underfunded. The main factors for this gap include patriarchal socio-cultural, economic, rigid gender roles justified on the grounds of tradition, customs, and religion; uneven educational attainment for women and girls; poverty; and political unrests and conflicts (African Union and the United Nations Office of the High Commissioner for Human Rights, 2016; Bond, 2010; Ndulo, 2011). Existence of gender-biased laws, limited physical access to justice delivery centers, lack of awareness, and delay in dispensation of justice have been consistently cited as major impediments. Attitudes of judicial officers toward gender issues and lack of knowledge on specific gender dimensions of the law and how it undermines justice are also among the major barriers (Judicial Service of Ghana et al., 2008).

Measures adopted to address these barriers have included programs to enhance judicial responsiveness to gender equality. Responsiveness in this context entails the ability of the judiciary not only to respond to the demands of the dominant sections of society but also the ability to recognize and respond to the needs encountered by marginalized sections of the society, women and girls in particular (UN Women, 2019). Such efforts have encompassed, among others, gender training, increasing the number of female judges and magistrates, creation of special courts to deal with specific gender-based crimes/issues, and compilation and sharing of reference materials in such forms as gender bench books, feminist judgments, and many others. This chapter focuses on gender training.

For the purposes of this chapter, I contextualize judicial training broadly to include continuing judicial education specifically tailored to orient and build the capacity of judges and magistrates by equipping them with skills to identify and address gender issues in their adjudication. The emphasis on judicial training draws on existing research, which has demonstrated that due to the uniqueness of the dynamics of gender, it is crucial for judges to understand and develop skills related to a wide range of legal and social issues. The importance of specialized educational programs for judges is well founded in the literature (Dawuni & Bauer, 2016; Wallacet, 2003; Dawson, 2015; Wallace, 2000; Armytage, 1995; Jaffe & Claire, 2018; Wikler, 1989; Minamino, 2012). Judicial training is deemed an inevitable tool for addressing adjudicators' built-in and often strongly held sets of values, preconceptions, opinions and prejudices, and other inaccurate perceptions that influence judicial reasoning (Cameron, 1990).

The state of affairs in the Judiciary of Tanzania

Tanzania has been an active player in the gender justice discourse. By signing and ratifying the CEDAW and the Maputo Protocol, the country has demonstrated its commitment to the pursuit of gender equality.² In line with obligations stemming from these two instruments, Tanzania has embodied the principle of equality between men and women in its constitution. Discrimination on the basis of sex is expressly prohibited under Article 13 (5) of the Constitution of the United Republic of Tanzania, 1977. Enactment of discriminatory laws and laws with discriminatory effect is also explicitly prohibited.³ In 1998, the parliament enacted the Sexual Offences (Special Provisions) Act, No. 8 of 1998, which introduced several provisions to safeguard the personal integrity, dignity, liberty, and security of women by, among other things, introducing stiff sentences for sexual offenses. The land law reform carried out in the late 1990s, which resulted in the enactment of the Land Act, No. 4 of 1999 and the Village Land Act, No. 5 of 1999, ushered a positive change in land ownership and administration. It affirmed the rights of women to acquire and register land in their own names.⁴ It also annulled discriminatory customary rules denying women the ability to own, transfer, and use land and introduced a mandatory requirement for representation of women in land adjudication bodies, the Village Land Council and the Ward Tribunal in particular.⁵

While these measures are laudable, as they signal a strong commitment and political will to combat discrimination, gender inequality has remained obstinately high (UNDP, 2017). There is a predominance of gender inequality, mainly perpetuated through patriarchal systems, customs, and traditions (Nkoma-Wamunza, 1998; TAWLA, 2014; LHRC & ZLSC, 2019). Rape, sexual harassment, domestic violence, child/forced marriage and pregnancies, and denial of property ownership and inheritance are pervasive forms of violence. According to the 2016 Tanzania Health and Demographic Survey (THDS), 40% of women aged 15–49 years have experienced physical violence, and 17% have experienced sexual violence. Half of all ever-married women have experienced

spousal violence in the form of physical violence, emotional violence, or both (MoHCDGEC, 2016). In most communities, these incidents are deemed acceptable norms. The THDS report reveals that 58% of women believe that a husband is justified in beating his wife if she burns food, argues with him, goes out without obtaining his permission, neglects the children, or refuses to have sex with him. This is far above the regional sub-Saharan African average of 43.5% (MoHCDGEC, 2016). Consequently, these offenses are rarely reported. Because of cultural influences, limited resources, sheer ignorance of rights, fear, and intimidation, most of the victims prefer amicable settlement at the family level instead of seeking help from law enforcement organs.

Those who defy the cultural barriers and seek redress are not guaranteed a timely and positive outcome due to the structural barriers embedded in the justice system. Customs and practices perpetuating gender inequality form part of the substantive law. Just as is the case in most jurisdictions in Africa, in Tanzania, statutory law, customary law, and Islamic law co-exist. The Judicature and Application of Laws Act [Cap 358 R.E. 2019] (JALA) recognizes and mandates the courts to apply customary laws when resolving disputes between members of the same community or between members of different communities if the rule of customary law of both communities is similar. These rules have been codified under the Local Customary (Declaration) Order of 1963, which serves as a source of customary law applicable in courts. As most of these rules emanate from patrilineal communities, they inherently encompass gender-discriminatory components deeply entrenched in the respective communities. For instance, the customary rules of inheritance applicable in patrilineal societies as codified in schedule 2 to the Local Customary Law (Declaration) (No. 4) Order, 1963 systematically prefer male over female family members on matters of inheritance and administration of estates.⁶ Some of these rules entirely deny widows any share of inheritance from their deceased husbands' estates and place them under the care of the children or male relatives of the deceased husbands. Others deny women and daughters the right to inherit clan land.⁷

Adjudication of these rules and other laws with similar effects is a complex process. It involves multifaceted issues with far-reaching consequences, not only for the rights of women and for gender relations between the litigants who come before the court, but also for their respective families and the society at large. Determination of rights of the parties tends to require more than the basic legal analysis skills. Knowledge of the gender dimensions of the law and how it undermines women is fundamental in ensuring that the outcome of litigation does not further the injustices sanctified by these rules. Such a requirement is not always available, because not all the judges and magistrates are sufficiently equipped with gender skills. Professional training for lawyers in Tanzania does not provide a foundation for appreciation of the gender dimensions of the law.

Courses with greater bearing on gender are rarely taught in the Bachelor of Law (LL.B) degree, which is the foundation course for a legal career. The law faculties focus on providing students with broad education in law. As there is no nationwide LL.B curriculum, the law faculties are at liberty in deciding

what to teach, provided they include in their respective curricula the traditional legal subjects such as administrative law, civil law, criminal law and procedure, evidence law, and law of contract. These have been designated as compulsory courses by the Council for Legal Education (CLE). With the exception of family law, which has been included in the list of compulsory courses, other courses deemed important for fostering gender equality such as human rights law, probate and succession, law of the child, and gender and law are electives. The teaching of these courses is not guaranteed and tend to be predicated upon factors such as priorities of the respective law faculty or school, availability of lecturers, and the interest which the respective course is capable of generating amongst students. There is currently no accurate empirical data on the extent to which these courses are able to generate interest among students. However, based on the author's experience from the University of Dar es Salaam, which is the oldest and major law faculty in the country, only a few students study these subjects at the LL.B level. Students find these courses less attractive due to their perceived low ability to generate well-paying clients compared with business-oriented courses such as banking law, tax law, insurance law, investment law, and intellectual property law.

At the Law School of Tanzania, which offers a practical Postgraduate Diploma in Law, human rights and probate law are taught as compulsory subjects for all law graduates who join the School. However, this does not offer a comprehensive solution either. Training at this level does not focus on theoretical issues that have long-lasting impacts. It is exclusively centered on procedural aspects of law specifically meant to expose students to certain practical aspects of law in preparation for legal practice. Arguably, very few law graduates in the country can claim to have the required competence in gender, or human rights in general for that matter. Moreover, since specialization in gender is not a prerequisite for recruitment as a judge or a magistrate, it is possible that only a marginal number of LL.B graduates who join the judiciary have had an exposure to the gender aspects of the law.

Dire skills deficiency in the JoT compounds this further (Pedersen & Haule, 2013). The Judicial Training Policy reveals that as of 2018, over 60% of sitting magistrates do not have an LL.B degree, which is the minimum educational standard for a magistrate in the country.⁸ Statistics obtained in the course of this research show that as of May 2020, the proportion has dropped to 53.3%.⁹ Most of these functionaries of the judiciary have a Certificate or Diploma in Law, mainly acquired from the former Institute of Development and Management Mzumbe (IDM Mzumbe), which used to serve as the training hub for primary court and district court magistrates.¹⁰ Training at this level was confined to introducing students to general principles of law with no exposure to the gender aspects of law. What is alarming is that magistrates in this cohort are mainly based in primary courts, where customary law is applicable in resolving disputes. Disputes such as probate, domestic violence, divorce, and related disputes, which have a great bearing on gender relations, are mostly adjudicated at this level. The majority of women in rural areas are potential users of these courts, because they are

geographically closer to them, unlike district courts, which are located in urban areas, mostly at district headquarters. A combination of these factors means that disputes involving gender issues in the country are adjudicated by persons who literally have no exposure to the gender aspects of the law. What is more alarming is the fact that magistrates at this level sit with court assessors who not only advise them on matters of customary law but also participate in decision-making process with voting powers equal to the magistrate (Kyando & Peter, 1994). As magistrates do not have a strong background on gender, ethnic biases and gender stereotypes that the assessors bring along can easily influence the outcome of adjudication processes in general, and this is the case even where the assessors are women (Tenga & Peter, 1996). A convergence of these factors underlines the need for robust gender training programs to build the capacity of judges and magistrates.

Narrowing the gap: JoT and the Institute of Judicial Administration–IJA Lushoto

The JoT attaches importance to training as a tool to address skills deficit and build the capacity of its staff. In-service trainings organized and coordinated by the Department of Administration and Human Resource, which is responsible for staff welfare and development, has been an integral part of JoT activities and programs. However, due to the absence of a well-defined training policy, these programs were haphazardly conducted with little regard to the actual training needs of judges and magistrates. To address this problem, in 1998, the Parliament of Tanzania enacted a law for establishment of the Institute of Judicial Administration (IJA)–Lushoto.¹¹ Being the national institution for judicial training, IJA was expected to spearhead judicial capacity building and skills gap enhancement within the judiciary. However, for many years after its inception, it focused exclusively on offering certificate and diploma courses in law, meant to prepare court clerks and primary court magistrates. Continuing education for judicial officers, which is pivotal in improving the capacity of judicial officers, remained untraversed.

With this background, repositioning IJA and strengthening its capacity to enable it to assume its central role in enhancing the skills of judicial and non-judicial officers is considered as central in realization of the reform envisaged in the World Bank–supported Citizen-Centric Judicial Modernization and Justice Service Delivery Project and the JoT’s Strategic Plan. When the JoT passed its Five-Year Strategic Plan (2015/2016–2019/2020), it specifically identified the need to strengthen IJA’s capacity to conduct judicial training as one of the key strategies under pillar one of the three pillars of the Strategic Plan. In 2019, the JoT passed its first ever Training Policy (JoT, 2019c) together with a three-year training program (JoT, 2019d). The policy is very ambitious and holds great potential for refining and restructuring judicial training in the country to respond to societal needs. The policy underlines the importance of induction, orientation, and mentoring programs.

The orientation and induction programs are offered as part of a mandatory program for newly recruited judges and magistrates. Its aims are two-fold, namely, to familiarize and integrate new judges and magistrates into the JoT and to equip them with judicial and managerial principles, procedures, and practice as well as judicial ethics and conduct. The mentorship program is yet to be implemented. It entails placing the newly recruited members under a senior and experienced employee for purposes of practical guidance and imparting knowledge, skills, and experience for ultimate change of attitudes of less experienced employees in order to ensure their growth within the Judiciary Service (JoT, 2019).

On its part, IJA has responded by establishing a directorate responsible for continuing judicial education. Through this directorate, IJA and the JoT have passed a three-year training program. Some of the programs have already been rolled out, the mandatory induction program for judges being among them. Considering the pervasiveness of gender inequality and gender-based violence/violence against women (GBV/VAW) cases, it was envisaged that gender training would be integrated in these trainings. However, the attention to gender in both programs is obscured. The focus has, rather, been on substantive and procedural laws and judicial skills of judging (“judge’s craft”). Topics covered include the conduct of criminal and civil trials, judgment writing, procedures guiding the adjudication of labor cases, land matters, commercial disputes, economic and organized crimes, human rights, and constitutional petitions. Also included are emerging legal issues such as the use of information and communication technology (ICT) in the dispensation of justice.

To some extent, gender issues are covered under the topic on matrimonial causes, probate, and inheritance. As the main focus of the induction programs is on procedural aspects, coverage of gender issues tends to be minimal and dependent on the trainer’s level of exposure to gender. Trainers who have been well oriented on the gender aspects of judging have a tendency to bring gender perspectives into their respective topics. In contrast, the approach taken by trainers who have little exposure to gender issues and women’s rights is mainly gender neutral. Time constraints are also a major barrier for coverage of gender aspects of adjudication in induction programs. Constrained by time, the trainers limit their topics to the general principles of law, procedure, and evidence. Techniques of handling trials with sensitive gender issues such as rape cases and other sexual violence are not covered. The eschewed attention to the techniques of handling such trials is a lost opportunity. The judges assume their adjudicatory roles oblivious of gender inequality issues likely to confront them in the course of adjudication.

Considering that judges come from different backgrounds, and some have had no exposure to gender issues, the omission is fraught with danger for undermining the achievement recorded so far. As alluded to earlier, adjudication in these areas involves multifaceted gender issues that cannot be fairly and equitably adjudicated upon if the adjudicator is not adequately equipped with knowledge on the gender aspect of the law. For instance, a judge or magistrate

dealing with a domestic violence case needs to be mindful of the high risk of repeated abuse, retaliation, and threats against the victim due to the fact that the victim not only knows the offender but has had an intimate relationship with him. Limited attention to gender is also apparent in other continuing legal education programs conducted by IJA and JoT. For instance, between 2016 and 2019, the continuing education programs jointly conducted by JoT and IJA focused on conventional areas such as criminal trial and practices, evidence law, and judgment writing. Other areas covered include labor law, practices and procedure, case flow and management, handling of cases involving offenses against wildlife, corruption offenses, and illicit drug trafficking cases (IJA, 2017, 2018, 2019).¹² It is worth noting that the IJA has started to embrace gender in its trainings; for instance, in 2018, when the JoT and the IJA organized a five-day training on constitutional litigation. The training was attended by all judges of the High Court. Constitutional petitions, including those in which the parties litigated over gender-insensitive and discriminatory laws, were discussed in the course of training. From 2018 to 2019, IJA conducted trainings for juvenile justice frontline workers. These trainings were organized under a tripartite collaboration between the JoT, IJA, and the United Nations Children's Fund (UNICEF) and were conducted in all High Court zones with the aim of equipping the participants with knowledge and skills for effective implementation of the Law of the Child Act, 2009.

IJA's support for gender training has gained more momentum following its partnership with the South African-based Centre for Reproductive Rights. Through this partnership, IJA and the Centre for Reproductive Rights will provide training in access to justice, reproductive and health rights in Africa and beyond. Under the auspices of this partnership, in the fiscal year 2019/20, the IJA in collaboration with the Centre for Reproductive Rights (South Africa) organized a regional workshop on gender issues and reproductive health rights. Moreover, in 2020, the IJA in collaboration with the Centre for Reproductive Rights and the UN Human Rights Office of the High Commissioner organized an Africa/Asia Cross Regional Judicial Webinar on Access to Justice and Protecting Reproductive Rights during the COVID 19 Health Crisis. A number of judicial officers from Tanzania were invited and participated. This partnership has great potential for building the capacity of IJA to handle gender-specific trainings.

There are two explanations for the limited focus on gender equality topics. First, with regard to the compulsory induction program, time is the major constraint. The program runs for only three weeks. Experience has shown that the time allocated to the program is not sufficient to cover all the topics. Instructors do not get enough time to cover the topics allocated. As a result, they cannot stretch beyond general principles of their respective topics. The second problem is inadequate funding, which is a persistent problem in JoT and IJA alike.

The Chief Justice of Tanzania and the entire JoT management team have demonstrated high commitment toward the advancement of the agenda for gender equality in the JoT. The Chief Justice, who also serves as patron for TAWJA, has on numerous occasions appealed for gender equality in adjudication as an

important goal to be achieved in dispensation of justice. Further commitment is demonstrated through the JoT's outstanding support for TAWJA's work. In spite of its meager resources, the JoT has on numerous occasions supported TAWJA's activities. As will be shown in the next part, in 2004 to 2006, the JoT financed TAWJA's training. Also, in 2018, it sponsored TAWJA to host the Regional Conference on "Gender and the Judiciary in Africa" held in Arusha in 2018. On the IJA's side, the top management has demonstrated strong commitment to gender equality. The Chairman of the Council and the Principal are part of the TAWJA's team of trainers. They all actively participate in TAWJA's trainings and other activities.

Gender training in the JoT: TAWJA winnowing gender into judicial training

TAWJA was formed in 2000 as an umbrella organization for women judges and magistrates in Tanzania. It is also a national chapter for the International Association of Women Judges (IAWJ). TAWJA's key objectives are to advance women's rights by conducting legal research on gender equality and human rights; exchanging information on issues of critical concern to women; and uprooting gender bias from the judicial system and the community (TAWJA, 2000, 2015). In line with these objectives, TAWJA has been a positive force in the advancement of substantive gender equality. It has played a distinctive role in narrowing the gender skills gap in JoT through advocacy for increment of female adjudicators; promoting women's access to the courts; advocating for the increase of the number of women judges at all levels; developing judicial leadership; and capacity building on gender aspects of adjudication.

TAWJA was the first organization to introduce gender training in the JoT in early 2000 and has remained highly committed to the advancement of gender training for judicial officers. Its main focus has been to build the capacity of judges, magistrates, and law enforcement officers by equipping them with the knowledge and skills required in the handling of disputes with gender elements and in particular, sexual offenses, dissolution of marriage, custody of children, maintenance and inheritance rights, and other forms of violence against women. TAWJA's training programs have been helpful in introducing the participants to relevant regional and international norms, most especially the norms contained under the CEDAW and the Maputo Protocol. The participants are also introduced to comparative jurisprudence from other jurisdictions, particularly from within the Commonwealth.

In the first 3 years of its existence, TAWJA trained about 250 judicial officers and officials of the law enforcement organs, on the application of national, regional, and international legal norms in resolving gender-related disputes (TAWJA, 2015). This training was part of the IAWJ's Jurisprudence for Equality Programme (JEP), which highlighted the IAWJ's JEPs implemented in Kenya, Tanzania, and Uganda. The program was funded by UN Women (then UNIFEM). The remarkable success registered in the initial three years (2001–2003) prompted

the judiciary to extend the training program for two years from 2004 to 2006. The completion of the two-year extension ushered in a remarkable training program conducted through a two-year project named “Jurisprudence on the Ground (JOG)” (TAWJA, 2015; Yoon, 2016). The project was funded by United Nations Democracy Fund (UNDEF) and was implemented in partnership with the IAWJ and a local non-governmental organization named the Society for Women and AIDS in Africa-Tanzania (SWAA-T) from September, 2008 to August, 2010. Approximately 60 magistrates and judges were trained in human rights law and women’s rights (TAWJA, 2015). Between 2010 and 2012, TAWJA, with funding from the royal Danish government, implemented a successful training program through a project named *Sextortion: Naming, Shaming and Stopping Sexual Exploitation by Abuse of Authority* (TAWJA, 2015). The project, which became a flag bearer for TAWJA’s training, was extended for three years to 2015 through funding from UN Women, Tanzania. Numerous seminars and workshops covering diverse categories of people including judicial officers, policymakers, officials from law enforcement organs, legislators, community leaders, religious leaders, teachers, doctors, and law students were conducted. A sextortion toolkit prepared in simple language was used in awareness raising. With yet more support from UN Women, TAWJA has implemented a three-year training program under Strengthening the Court System in Management of Cases Involving Gender Based Violence and Violence Against Women. A total of 345 justice sector personnel (including 12 judges and 274 magistrates) have been trained. A wide range of topics were covered during this training. They include international and domestic human rights regimes, prevalence of stereotypes and implications for judicial process, community response to sexual and gender based violence (SGBV) cases, sextortion, and the role of courts in crafting effective remedies.

These trainings are conducted by trainers with vast knowledge and skills in adjudication and gender issues. TAWJA’s team of trainers comprises female and male Justices of Appeal and Judges of the High Court, who are either in service or in retirement. There are also registrars, deputy registrars, and magistrates. All these are inducted through an intensive training of trainers’ program conducted to equip them with knowledge and skills on gender training. A participatory and engaging approach is mostly preferred to stimulate interest and active participation. A combination of training methods, including group activities, case studies, role plays in the form of moot trials, and plenary sessions, is used to enable the participants to relate what they have learned to the realities on the ground.

In addition to judicial training, TAWJA has recorded remarkable success in enhancing understanding of women’s rights through outreach programs conducted in schools, villages, and moot courts and printing and dissemination of brochures on law and procedures on gender-based violence and violence against women. Also notable are Radio and TV programs on response to violence against women and gender-based violence. The programs are aired across the country most especially during the 16 days of activism against Gender-Based Violence¹³ and during the week preceding the official opening of the new judicial year (Law Week).¹⁴ From January 31 to February 5, 2020, in celebration of Law Week,

TAWJA members across the country conducted outreach programs in primary schools and through TV programs and community radios. These programs have earned TAWJA commendation from within the JoT and beyond. TAWJA also prepared and distributed reference materials in the form of case books and journals for distribution to its members, other adjudicators, and stakeholders.

TAWJA is yet to conduct an evaluation of its training programs. Therefore, at the moment, it is difficult to assess the actual impact of these programs. However, there has been a significant change in the jurisprudence. There is now a positive change in judicial analysis and interpretation of laws that inhibit gender equality and negatively affect the rights of women. As most of these developments have happened after the introduction of gender training programs, which the majority of judges (male and female) have attended, it can be safely argued that there is a correlation between these developments and TAWJA's trainings.

The first area in which significant achievement has been recorded is child marriage. The breakthrough happened in 2016 when the High Court of Tanzania issued a landmark decision in *Rebeca Gyumi Z. Gyumi v. The Attorney General*.¹⁵ In this case, the provisions of Sections 13 and 17 of the Law of Marriage Act, 1971, which sanctioned marriage of girls of 14 and 15 years of age, were declared a nullity for violating the principle of equality embodied under Articles 12 (1) and 13 (1) and (2) of the constitution. In addition to these constitutional provisions, which were used as benchmarks, the court found inspiration from the principle of equality embodied in Article 6 of the Maputo Protocol and the prohibition of child marriage embodied in Article 21 of the African Charter on the Rights and Welfare of the Child, 1990. A similar approach was used on appeal, whereby the Court of Appeal upheld the judgment of the High Court.¹⁶ In its judgment, the Court of Appeal boldly stated that the impugned provisions can no longer be sustained because, apart from being inconsistent with the constitution, they conflict with the principles embodied in international and regional instruments and in particular, the United Nations Convention on the Rights of the Child, 1989, the African Charter on the Rights and the Welfare of the Child, 1990, and the Maputo Protocol, 2003. The decision has been widely celebrated in the country and beyond.¹⁷ It is regarded as an emancipatory tool for girls who would, in the absence of such law, be forced into marriage during their childhood on the pretext that such marriages were legally recognized.

Notable strides have also been made in adjudication of sexual offenses. In this area, progressive jurisprudence is manifested in three areas: determining the probative value of the victim's testimony, proof of penetration in rape cases, and effect of late reporting of rape incidents. With regard to the evidential value of the victim's testimony, the Court of Appeal has now established a principle that recognizes evidence rendered by a victim of rape and sexual offenses as the best evidence.¹⁸ With this liberal jurisprudence, an offender can be convicted based solely on uncorroborated testimony of the victim. In the past, such evidence was held insufficient to secure a conviction if it was not corroborated by other evidence, especially a medical report showing that there was penetration and testimony of a doctor who medically examined the victim. Articulating this principle

in *Godi Kisangela v. R.*¹⁹ the Court held that courts should not be bound by the evidence of medical experts, because such witnesses are most often not the actual witnesses to the incident and their evidence mainly constitutes opinions.²⁰

In *Abilahi Mshamu Mnali v. R.*,²¹ the Court of Appeal dealt extensively with the victim's delay in reporting the incidence. In this case, the appellant, who was then a head teacher of a primary school in Mtwara Region, allegedly raped and impregnated a pupil of his school. The appellant sought to impeach the victim's credibility on account that for over one year she did not disclose the incident to any person. The Court rejected this argument and held that delayed reporting or disclosure does not necessarily cast doubt on the credibility of the prosecutrix. The court reasoned that although timely reporting is desirable, it is not always possible. Victims may be inhibited from reporting by multiple and complex factors such as duress, threat or fear of retaliation, trauma, psychological conditions, and fear of being ostracized. The court cited with approval the decision of the Supreme Court of India in *State of Uttar Pradesh v. Chhoteyal*,²² which held that in dealing with rape cases, the court has to be mindful of the fact that the victim loses value as a person. Inspired by this decision, it concluded that

[t]o achieve justice, *the court must be sensitive and responsive to the plight of victims. The evidence must be scrutinized objectively and free of any myths or preconception.* When the need arises a plausible explanation for the delayed silence in reporting the incident should suffice. [emphasis is mine]

Also, the Court of Appeal has lifted the veil that used to encumber justice for victims of rape and defilement who, due to such factors as cultural background, upbringing, religious beliefs, age, and other social or cultural constraints, failed to lead elaborative testimony in proof of intercourse/penetration. Currently, words such as "sexual intercourse" or "to have sex" are accepted as proof of penetration of the penis into the vagina.²³ In the past, such statements were held as insufficient proof. The principle, as articulated in *Mathayo Ngalya @ Shabani v. R.*,²⁴ was that for the offense of rape to be deemed to have been proved, the prosecution had to lead evidence of penetration as opposed to a general statement alleging that rape was committed without elaborating what actually took place. Testimony failing this test was rejected outright. The cases of *Hakizimana Syriverster*²⁵ and *Melkior Peter v. R.*²⁶ are illustrative. In *Hakizimana*, the victim testified that the assailant dragged her into a house, where he stripped her naked and had carnal knowledge of her. Similarly, in *Melkior Peter*, the testimony of the victim was that her assailant pulled her to a certain house, where he covered her mouth, undressed her, and raped her. In both cases, the testimony was found to be insufficient proof of penetration. Had these two cases been decided after the aftermath of *Hassani Bakari @ Mamajicho v. R.*, they could have yielded different outcomes. Summarizing this development, the Court of Appeal in *Hassan Kamunye v R*²⁷ made the following remark:

There is a paradigm shift in the recent jurisprudence of the Court from the orthodox position where in offences of this nature; sexual offences,

the victims were supposed to be graphic in narrating the ingredients of the offence. Luckily, the Court has had an opportunity to deal with the point in some cases on rape. The current position is that in proving that there was penetration in a rape case, it is not always expected.

This jurisprudence has indeed revolutionized justice for victims of sexual offenses, ensuring that cultural and technical barriers can no longer be relied upon as tools for perpetuating injustice for victims of rape. All these decisions are from the Court of Appeal, which is at the apex of the court hierarchy. Hence, they form part of the law and are binding upon the High Court and all subordinate courts, including the district courts, which exercise original jurisdiction on sexual offenses.

There is also a steady growth of progressive jurisprudence in matrimonial and inheritance matters. Drawing inspiration from the international and regional instruments and jurisprudence covered in TAWJA trainings and building on landmark authorities such as in *Bi Hawa Mohamed v. Ally Seif*,²⁸ *Ndewawosia d/o Ndeamtzo .v Emmanuel s/o Malasi*,²⁹ and *Bernado Efraim v. Holaria Pastory and Gervas Kaizilege*,³⁰ the judges and magistrates have increasingly employed gender analysis in their pronouncements. For instance, in *Laurence Mtefu v. Germana Mtefu*,³¹ the court outright rejected the argument that housekeeping is a purely conjugal obligation and does not entitle the wife to any share in the matrimonial assets. It proceeded to state that such an argument is a clear reflection of the violence and discrimination that women have endured over the years. In *Anna Aloyce v. Zacharia Zebedayo Mgeta*,³² the court held that by ratifying the CEDAW and the Maputo Protocol, Tanzania assumed an obligation to ensure that men and women are entitled to an equitable share of matrimonial assets. In *Naftal Joseph Kalalu v. Angela Mashirima*,³³ the court relied upon the provision of Articles 12 and 13 of the constitution and Article 1 of CEDAW to assert the right of a widow over the deceased husband's estate even though the couple was not formally married.

Challenges and prospects

Further to the challenges discussed in the preceding parts of this chapter, lack of reliable sources of funding threatens the sustainability of TAWJA's judicial training programs. TAWJA does not have a steady flow of funding. It only generates a little income from members' subscription fees, which is incapable of sustaining the training programs and operational costs. TAWJA's training programs are, consequently, heavily reliant upon external funding. This is a serious impediment considering that the interests of the donors are dynamic and their priorities may not necessarily be aligned to TAWJA's mission/priorities. Funding from the judiciary is minimal and not steady either. The immediate effect is a steady reduction of the number of trainings conducted. For example, as of the date of this publication, most of the judges who were appointed in 2019 and 2020 have not attended TAWJA's gender training programs, which implies that for more

than a year, they have had no opportunity to be trained on how to handle gender issues in their adjudication. The situation would have been different if the induction program had been inclusive of training on gender-related aspects of judicial decision-making.

Attitudes toward gender inequality are yet another challenge. In some of the cases, the progressive jurisprudence discussed here is either overlooked or applied with hesitation. Matrimonial cases involving the distribution of matrimonial assets are a typical example. Although three decades have passed since the Court of Appeal formally recognized household work rendered by housewives during subsistence of marriage as a valuable contribution for purposes of assessment of the distribution of matrimonial assets following divorce, annulment, and separation, there are still cases where such contribution is overlooked or accorded lesser weight. For instance, in *Mohamed Rashid Mbita v. Salima Ally*,³⁴ the trial magistrate, having cited the principle in *Bi. Hawa Mohamed v. Ally Sefu*, unexpectedly changed course and held that family chores and farm work performed by the wife were incapable of entitling her to a share in the matrimonial assets.³⁵ There is also a tendency to award wives a lesser share of matrimonial assets. In most decisions emanating from subordinate courts, women are awarded a maximum of 40% of matrimonial assets, while 60% go to the male spouse.³⁶ This happens even in cases where the contribution made by the wife in the acquisition of the assets is higher compared with the contribution made by the husband. Although these percentages are often reversed on appeal, the proportion of women likely to be affected by this tendency is higher because the majority do not appeal due to such factors as ignorance of their rights and other social and economic barriers. More training is required to educate judges and magistrates on the need for objectivity in the exercise of discretion in the assessment and distribution of matrimonial assets.

Wrong attitude is also manifested through a lack of attentiveness in handling trials involving sexual offenses. Of serious concern is the laxity in admitting the evidence of a child prosecutrix and especially compliance with the requirement of Section 127 (2) of the Evidence Act, 1967 [Cap 6 R.E 2002]. The law requires that prior to admitting a child below the age of 14 as a witness, the court must require the child to promise that they will tell nothing but the truth. In the past, the law required the court to administer a *voire dire* test to determine whether the child is possessed sufficient intelligence and understands the duty of speaking the truth. Failure to comply with this requirement vitiates the testimony so adduced and renders it equal to unsworn evidence, which is incapable of earning a conviction. Although the law has been amended to simplify the procedure for the *voire dire* test by only requiring that the child be asked to promise to tell the truth, the level of laxity in this area is alarming. A number of trials are conducted in defiance of this rule. Since in most of these cases the testimony of the child prosecutrix tends to be the only tangible evidence linking the offender to the offense, the laxity invariably defeats the ends of justice for the victim by warranting acquittal of offenders.

To address these vices, it is recommended that judicial training programs implemented by the IJA Lushoto should go beyond equipping magistrates and

judges with knowledge on substantive and procedural laws. Specific focus should also be directed at equipping judges and magistrates with knowledge and skills to analyze and interpret the law in the context in which justice is administered. To achieve this, it is important that aspects of specific focus on gender be integrated into the judicial training program, which is currently under preparation. Topics such as handling of SGBV cases, matrimonial cases, and probate and inheritance matters should compulsorily be taught in orientation programs for judges and magistrates to equip them with knowledge and skills to prepare them to effectively respond to gender issues in their adjudication. Instruction on topics with gender relevance, such as criminal trial and judgment writing (analysis of evidence), should also include a gender aspect to prepare the judges and magistrates to respond to gender inequality.

Compilation and distribution of reference materials is yet another avenue for improvement of judges' and magistrates' awareness of gender issues. The IJA, JoT, and TAWJA have a shared interest in the compilation and distribution of reference materials for raising awareness. TAWJA publishes a *Case Book* and a *Journal*, both of which are replete with progressive authorities on gender issues. It is also currently working on a gender bench book. The JoT in collaboration with IJA has recently issued two important publications titled *A Bench Book for Judges Tanzania* (JoT, 2019a) and *A Quick Reference Guide for Magistrates in the District Courts and Courts of Resident Magistrates in Tanzania* (JoT, 2009e). They have also revised the *Handbook for Magistrates in the Primary Court* (JoT, 2019b). These materials are designed to assist users to acquire the necessary skills, knowledge, and proficiency for a better understanding of legal issues and nuanced interpretation of laws. These publications are replete with progressive authorities on gender issues, particularly in areas such as probate and administration of estates, land cases, and matrimonial proceedings. They provide users with guidance on how to deal with notorious issues such as conflict of laws in probate and administration of estates, annulment of marriages, presumption of the marriage, child custody and maintenance, and property rights of spouses in divorce, separation, and annulment of marriage. The authorities include landmark cases such as *Ndewawiosia d/o Ndeamtzo v. Imanuel s/o Malasi*,³⁷ in which the High Court in 1968 upheld the right of daughters to inherit from the estate of their fathers;³⁸ and the case of *Bi. Hawa Mohamed v. Ally Sefu* (*supra*) on the division of matrimonial property at dissolution of marriage, which has been exhaustively discussed. These resources should be used as a foundation for the development of joint research projects and publication on gender aspects of adjudication and wider distribution of the materials so published to adjudicators and all justice sector stakeholders. The publications should include, as far as practicable, all the relevant authorities in areas with a notorious record of gender-based injustice. Arrangements for regular updating and revision of the existing literature should also be put in place.

Efforts should also go into forging collaboration with law faculties to create awareness for potential judges and magistrates and generate knowledge through research. The rich research capacity of the law faculties has great potential for generation of knowledge on key gender issues in the society as well as the actual

training needs for the JoT. On the other hand, the JoT can use its adjudication experience to impart knowledge to students by serving as moot courts judges and through other programs as guest speakers.

Conclusion

Judicial training on gender is a relatively recent phenomenon in the JoT. Until 2000, it was not part of judicial training and professional training for lawyers. Gender training was introduced in Tanzania by the TAWJA in 2000 (Yoon, 2016). Since then, TAWJA has spearheaded gender training for its members, other judicial officers, as well as prosecutors and other stakeholders on the gender aspects of the law. TAWJA's training programs mainly focus on introducing the participants to international and regional norms on gender equality and comparative jurisprudence from other jurisdictions. The sustainability of these programs is, however, questionable due to dependence on external funding and support. On the other hand, the JoT's training program implemented by IJA is yet to fully embrace gender in its core trainings, such as the mandatory induction program for judges. While some trainers include gender issues in their respective topics, this is not enough. It is recommended that the JoT should institutionalize gender training in the orientation and in-service training program for judges and magistrates. The experience gained through training programs jointly implemented by IJA and the Centre for Reproductive Rights, and informal collaboration and cordial working relationships between IJA, JoT, and TAWJA, should be used as a foundation for institutionalizing gender in JoT's judicial training program.

It is further recommended that concrete measures should be taken to allocate the necessary resources to TAWJA to sustain its training programs and enable it to reach more adjudicators, especially, those in the primary courts. Strengthening collaboration between TAWJA and IJA in training, preparation, and dissemination of reference materials and collaboration with law faculties is also recommended as a tool for enhancing gender awareness in the judiciary.

Notes

- 1 See Article 107A (1) of the Constitution of the United Republic of Tanzania, 1977.
- 2 See Article 1 and 2 of the Convention on Elimination of All Forms of Discrimination against Women, 1979. Also see Article 18 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.
- 3 See Article 13 (2) of the Constitution of the United Republic of Tanzania, 1977.
- 4 Section 3 (2) of the two Land Acts 1999 provides that the right of every adult woman to acquire, hold, use, deal with, and transmit by or obtain land through the operation of a will shall be to the same extent and subject to the restrictions as the right of any adult man. Section 3 (3) says that for the avoidance of doubt, it is hereby declared to be the law that where during the course of any marriage, either spouse acquires an interest in land in their own name and for their own occupation and use, whether in practice the spouse shares that occupation or use or not and by whatever lawful means that acquisition occurs, that interest in land belong exclusively to the spouse who

- acquired it and shall not under any circumstances be regarded as part of the property of the other spouse.
- 5 Section 60 (2) says where a village council establishes an elders council, that council shall consist of not fewer than five or more than seven persons, of which not fewer than two shall be women
 - 6 By customary inheritance law, as codified in schedule 2 to the Local Customary Law (Declaration) (No. 4) Order, inheritance rules are patrilineal (rule 1). Rule 5, which pertains to the right to administer the deceased's estates, states that "the administrator of the deceased's property is the eldest brother of the deceased, or his father, and if there is no brother or father, it can be any other male relative chosen with the help of the clan council." Only if there are no male relatives can a sister become the administrator. Men are given the right to administer both property and funerals (rule 2). Msuya, N. (2019). Challenges surrounding the adjudication of women's rights in relation to customary law and practices in Tanzania. *Pioneer in peer-reviewed, open access online law publications (PER/PELJ)*, 22. Retrieved from <http://www.scielo.org.za/pdf/pelj/v22n1/14.pdf>
 - 7 Rule 27 deals with inheritance of widows. It states that "the widow has no share of the inheritance if the deceased left relatives of his clan; her share is to be cared for by her children, just as she cared for them." Furthermore, according to rule 51, the deceased's heir is to have the responsibility of taking care of the widow. Under rule 20, women are allowed to inherit, except clan land. They can use clan land without selling it during their lifetime. If there are no men in that clan, a woman can inherit the land completely. Under rule 31, female children may not inherit clan land
 - 8 The breakthrough came from the bold decision by the JoT to assign law graduates to primary courts, which was a "taboo" before, because practising advocates were not allowed to appear in primary courts. This led to a considerable number of law graduates moving to primary courts. In a way, though advocates are still not allowed to appear in primary courts, the presence of graduates in these courts has to some extent improved the quality of the legal discourse in these courts.
 - 9 Information obtained from JoT Department of Administration and Human Resources on May 23-2020.
 - 10 Mzumbe was used as an in-house training for the judiciary, which produced primary court magistrates, court clerks, and other cadres in the lower judiciary and also provided opportunity for up-grading for those who were diligent and hard-working. Therefore, one could move from being a court clerk to primary court magistrate and later, district magistrate. From there, one now required a Bachelor of Laws to become a resident magistrate.
 - 11 Institute of Judicial Administration Act [Cap 405. R.E. 2002].
 - 12 For details, see report on continuing legal education activities by IJA as reported in *Institute for Judicial Administration Lushoto, Annual Activity Report 2016/2017*, p.22; *Institute for Judicial Administration Lushoto, Annual Activity Report 2017/2018*, pp.22–33; and *Institute for Judicial Administration Lushoto, Annual Activity Report 2018/2019*, pp. 1–29.
 - 13 This is an annual international campaign against gender-based violence, starting on the International Day for the Elimination of Violence against Women on November 25 and running until December 10, which is Human Rights Day.
 - 14 The event takes place in early February following the completion of the long judicial vacation.
 - 15 *Rebeca Z. Gyumi v. The Attorney General*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Case No. 5 of 2016 (Unreported).
 - 16 *The Attorney General v. Rebeca Z. Gyumi*, Civil Appeal No. 204 of 2017, Court of Appeal of Tanzania at Dar es Salaam (Unreported).
 - 17 In fact, following her success in this case, Rebeca Gyumi was recognized as one of the "100 most influential Africans" in 2019. See Rebeca Gyumi: Winning the battle against child marriages, *New African (London)*, 599, December, 2019/January, 2020, 32.

- 18 See the following authorities: *Selemani Makumba v. Republic* [2006] TLR 379; *Godi Kasenegala v. Republic*, Court of Appeal of Tanzania, Criminal Appeal No. 10 of 2008 (Unreported); *Alfeo Valentino v. Republic*, Court of Appeal of Tanzania, Criminal Appeal No. 494 of 2002; *Mohamed Haji Alli v. DPP*, Court of Appeal of Tanzania, Criminal Appeal No. 225 of 2018 (Unreported); *Juma Mohamed v. Republic*, Court of Appeal of Tanzania at Tanga, Criminal Appeal No. 4 of 2011 (Unreported); *Ramadhani Samo v Republic*, Court of Appeal of Tanzania, Criminal Appeal No. 17 of 2008 (Unreported).
- 19 *Godi Kisangela v R*, Court of Appeal of Tanzania, Criminal Appeal No. 10 of 2008 (Unreported).
- 20 *Ramadhani Samo v. Republic*, Court of Appeal of Tanzania, Criminal Appeal No. 17 of 2008 (Unreported).
- 21 *Abilahi Mshamu Nnali v. R*, Court of Appeal of Tanzania at Mtwara, Criminal Appeal No. 98 of 2010 (Unreported).
- 22 *Uttah Pradesh v. Chhoteyal* (2011) I.S.C.R. 406 at 429.
- 23 *Hassan Bakari @ Mamajicho v. Republic* Criminal Appeal No. 103 of 2012, *Minani Evarist v. Republic* Criminal Appeal No. 124 of 2007, *Ndikumana Philipo v. Republic* Criminal Appeal No. 276 of 2009, *Minani Selestin v. Republic* Criminal Appeal No. 66 of 2013, *Matendele Nchanga @ Awilo v. Republic* Criminal Appeal No. 108 of 2010, *John Martin @ Marwa v. Republic* Criminal Appeal No. 22 of 2008, *Joseph Leko v. Republic* Criminal appeal No. 124 of 2013, *Jumanne Shaban Mrono v. Republic* Criminal Appeal No. 282 of 2010, *Baha Oagari v. Republic* Criminal Appeal No. 39 of 2014, *Nkanga Daudi Nkanga v. Republic* Criminal Appeal NO.316 of 2013, *Athuman Hassan v. Republic* Criminal Appeal No. 84 of 2013 and *Simon Erro v. Republic* Criminal Appeal no. 85 of 2012 (all unreported).
- 24 *Mathayo Ngalya @ Shabani v. R.*, Criminal Appeal No. 170 of 2006, Court of Appeal of Tanzania.
- 25 *Hakizimana Syriverster v. R.*, Criminal Appeal No. 41 of 2004, Court of Appeal of Tanzania at Mwanza.
- 26 *Melkior Peter v. R.*, Criminal Appeal No. 9 of 2010, Court of Appeal of Tanzania at Arusha.
- 27 *Hassan Kamunyu v Republic*, Criminal Appeal No. 277 of 2016.
- 28 *Hawa Mohamed v. Ally Seif* [1983] TLR 32 (TZCA).
- 29 *Ndewawosia d/o Ndeamtzo v. Emmanuel s/o Malasi* (1968) HCD 127.
- 30 *Bernado Efraim v. Holaria Pastory and Gervas Kaizilege* (PC) Civil Appeal No. 70 of 1989, High Court of Tanzania.
- 31 *Laurence Mtefu v. Germana Mtefu* Civil Appeal number 214 of 2000 High Court of Tanzania, at Dar es Salaam (unreported).
- 32 *Anna Aloyce v. Zacharia Zebedayo Mgeta* PC. Matrimonial Appeal No. 1 of 2020, [2020] TZHC 851; (30th April, 2020).
- 33 *Naftal Joseph Kalahu v. Angela Mashirima* High Court of Tanzania at Dar es Salaam Civil Appeal number 145/2001 (Unreported).
- 34 *Mohamed Rashid Mbita v. Salima Ally*, Kilombero District Court in Civil Appeal No. 42 of 2018, original Matrimonial Cause No. 22 of 2016 Ifakara Primary Court.
- 35 This decision underlines our argument on the need for proper legal training for judicial officers. Departing from the path set by the Court of Appeal is an indication of lack of understanding of the principle of *stare decisis*.
- 36 This notwithstanding the decision of the Court of Appeal of Tanzania in *Richard William Sawe v. Woitara Richard Sawe*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 38 of 1992 (Unreported), which placed division of matrimonial property at dissolution of marriage at 50%–50%.
- 37 *Ndewawiosia d/o Ndeamtzo v. Imanuel s/o Malasi* (1967–1968) HCD No. 127.
- 38 Saidi, J. (as he then was) made the powerful statement that “It is quite clear that this traditional custom has outlived its usefulness. The age of discrimination based on sex

is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex. Creed, race or colour. On grounds of natural justice daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, on the basis of equality.”

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