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**VIOLENCE AGAINST WOMEN:
THE CASE OF AFRICA**

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Violence Against Women: The Case of Africa

Extent of the problem

The available research on violence against women¹ allows to conclude that this problem is a reality in African societies and families and that it is spreading.

However, it is necessary to underline that the research of the issue in African countries is far from being comprehensive. Some of the studies manage only to touch upon the problem of violence against women and, as a rule, limit themselves to the analysis of certain legal aspects of the issue such as legal remedies for the victims and sanctions against the offenders for some of the most common forms of violent offences. Some other studies address only specific type or form of violence against women. These studies are based on the official information available in the police stations, courts, clinics, social welfare organisations which is far from being complete for the purpose of a comprehensive research of the problem.

Thus, it seems that within the problem of violence against women in Africa a number of facets remain seriously under-documented and under-researched. For instance, the problem of a legal definition of violence in general and of its certain types in particular; causes of concrete types and forms of violence against women and interrelationships between these causes and the "minor" social status of women in the society and within the family in Africa; consequences of violence against women and its impact on national development; treatment of various types and forms of violence against women and the effectiveness of different approaches and methods; treatment of the women who are the victims of violence and the effectiveness of the measures being used - all of them still need to be surveyed.

The problem of legal definition of violence

As it turned out practically none of the available research on violence against women in Africa except the study on the incidence of domestic violence in Egypt² tries to provide a definition of violence as it is. On the whole, some of them define violence through the reference to the already identified and existing forms of violence such as rape, defilement, abduction, etc.³ Or they just provide the very definitions of specific forms of violence which

¹see bibliography in Annex 1

²Forms of Crisis Intervention and Types of Immediate and Structural Measures to Render Assistance to Women Assaulted in the Family: The Case of Egypt.

BAW/EGM/86/CS.5

³see bibliography No.15,14, 15, 16, 17 in Annex 1

are used by their domestic legislation.⁴

This approach seems inappropriate because there is, first of all, no universal understanding of legal terms in African states. In spite of the common legal basis for certain groups of African countries, it is rather often when one and the same term is used to identify offences which in different African jurisdictions are different in their *corpus delicti*. On the other hand, the offences with the same *corpus delicti* may appear under different names in the domestic legislation of different countries. The existence of specific offences under unique names in some countries as well as the possibility of new forms of violence to appear in future make the need for a common understanding and definition of violence even more acute.

On the other hand, the authors of many studies on Africa stress the limited capacity of law as an instrument of social change⁵ and, first of all, due to its nature as a reflection of the dominant political and social values of the given society. Secondly, because of the existing natural and artificial resistance to anything new which exist in every society. One has also to consider the necessity to interpret concrete legal provisions in order to apply them to the variety of real life cases. The interpretation of the law is done either by the legislators themselves or by the courts which is the majority of the cases. The courts tend to follow the rule of a legal precedent, a practice which is very common in juresprudence especially when the law itself does not provide exact and clear definitions and notions. Thus, voluntarily or not they might tend to restrict the introduction and protection of new progressive traditions and customs.

It seems that the proposed international instrument, if it is going to be drafted and adopted, should contain a clear definition of violence like the one suggested below:

Violence may be defined as a conduct which demands and enforces obedience while humiliating and degrading the victim through the use or the threat to use force in the form of any object, power of body, power of mind, and/or power of authority while it might be directed at the victim or at any other person, animal or object related with the victim.

Therefore, the term "sexual violence" may be used to define an offence in which coercion is used by the offender for achieving a specific purpose which humiliates and degrades the victim as a representative of her or his sex. At the same time, it seems appropriate to use the term "sexual harassment" only for defining a specific type of offences which lack the element of coercion into obedience but have, as its method and purpose, the element of humiliation and degrading the victim as a representative of her or

⁴see bibliography No.2, 3, 4, 5, 6, 8, 10, 11 in Annex 1

⁵see bibliography No.1, 2, 3, 7, 15, 17 in Annex 1

his sex. It is clear that both these types may have a number of forms differentiated by the object (women, men), age of the object (elderly, adults, children), state of mind of the object (normal, imbecile) and other factors (motherhood).

Forms of violence against women

As it was mentioned above, the available studies on African women⁶ identify a number of forms of violence against them, some of which are well known in other jurisdictions and the others may be considered to be specific to African region.

The overwhelming majority of the identified crimes represent various forms of sexual assaults such as abduction, defilement, carnal knowledge, indecent assault, and rape. It is also possible to include herein seduction. Some jurisdictions identify such an offence as insulting the modesty of a woman.⁷ Many African jurisdictions identify as well a number of derivatives of the above-mentioned offences such as attempted rape, or assault with intent to rape, or attempted defilement, or attempted indecent assault.

In case of African countries where parallel legal systems still exist, the one based on customary law and the one based on general law, it is possible to speak about legalised forms of violence against women. Among these, the studies identify such traditional practices as child betrothals and marriages, traditional marriages which do not require the consent of the parties in order to make the marriage legally valid, kidnapping of girls known as *the kulehya* or *the kwendzeselwa* in various tribes, wife inheritance in the form of *the levirate* or *the sororate*, widowhood rites as well as wife battering which are traditionally justified and permitted in many ethnic groups.

It is also possible to treat as specific legalised forms of violence against women such customs as female circumcision and other traditional health practices and taboos which exist with regard to women's sexuality, reproductive function, and nutrition and which are often supported by and based on various superstitions, beliefs and myths. Very often such practices force women to undertake surgical interference or simply lead to their exhaustion and malnutrition.

At last, a number of studies include prostitution and pornobusiness into the group of violent offences against women. With regard to this and having in mind the above-given definition of violence, it seems appropriate to differentiate between violent forms of prostitution and non-violent, i.e. when there is an element of coercion towards a woman to get involved into these activities, then we can speak about prostitution as a specific form of violence. In the opposite case, it is not more than sexual

⁶see bibliography No.2, 3, 4, 5, 6, 7, 10, 11 in Annex 1

⁷For example, Tanzania.

harassment of women.

Causes of violence against women

The available research⁸ identifies various causes of the problem from mental sickness of the offender up to provocative behaviour of the victim. Even more reasons are provided when it comes to specific forms of violence against women, as for example, in case of "wife battering". However, various authors express different opinions regarding the range and importance of different causes.

At the same time, many of them⁹ consider all these various reasons, except may be a mental sickness of the offender, as derivatives from the prevailing in the given society social and cultural attitudes & values which are, in their turn, based on the financial & economic dominance of men within the family and society what is reflected, for example, in such common for many African countries perceptions of a man as the main breadwinner for his family.

The idea of men's dominance in the society and, as a consequence, within the family (or vice versa) is reflected in the attitudes towards and secured in a number of prevailing through Africa traditional practices such as polygamy, bride-price, family planning, and motherhood. The existing attitudes towards these phenomena are not cases of violence but very often they are the causes of many conflicts including those which involve violence. This interrelationship is underlined in a number of studies.

Consequences of violence

Unfortunately, this aspect of the problem is seldom addressed to in the available studies, especially case studies.¹⁰ To the most extent, some of the authors just mention the sufferings of the women themselves, moral as well as physical, or the sufferings of the family children who are very often the witnesses of the battering of their mothers or sometimes the victims of violence themselves.

However, some of the papers put rather interesting questions regarding the consequences of violence against women in the society. For example, the relationship of child mortality with the traditional practice of child betrothals and marriages when girls who have just reached their puberty are forced into regular sexual

⁸see bibliography No.1 - 17 in Annex 1

⁹see bibliography No.1, 2, 3, 7, 10, 11, 12, 13, 15, 17 in Annex 1

¹⁰see bibliography No.1, 2, 3, 4, 5, 6 in Annex 1

life with their much older husbands.¹¹

So far as violence affects the moral and physical health of women who in Africa constitute more than a half of the labour force especially in agriculture, it has a direct impact on the state and development of national economies. Unfortunately nobody up to now has ever tried to calculate this type of loss which occurs due to the temporary or permanent exclusion of women-victims of violence from the production process or due to the reduction of women's creative abilities and the productivity of their labour as the result of violent acts against them. All such damage can be estimated and measured and it is sure to make rather big portion of the national GDPs.

It is a well-known fact that violence often provokes violence. In this sense, rather often women, who are driven crazy of violence against them and their children from men, and in order to protect themselves, are forced to murder their offenders. In such cases the society suffers a double loss.

Violence in general and against women in particular has also a long-term effect which might reveal itself when a younger generation grows up. Rather often in order to coerce or humiliate a woman, the offender directs violence against her children inflicting on them serious moral and sometimes physical damage. It is very often that such children suffer from various physical, psychological and mental traumas which might lead to their total disability in future or which might severely handicap their productive and creative abilities. But again this damage is under-researched and under-documented to say nothing about the one which is inflicted on children who are just witnesses of violence between the parents, or in the streets between the people, or from the pages of newspapers, journals, books, or from the screens of their TV sets and videomonitors, or in the cinema. Such children suffer a terrible damage to their moral values. By such examples they are forced to accept violence as a normal type of social relations and if they do then the very existence of human being society might be put under question.

Violence may also destroy the property which belongs to the victim or may even affect the animals which are the victim's pets. And this must be also identified as a consequence of violence so far as it affects the results of human labour or our environment.

Attitudes towards and treatment of violence and its victims

This is yet another acute sphere which still waits to be properly researched, especially the problem of treatment of victims of violence.

The available research shows a variety of attitudes, approaches and methods. It shows as well that very often the actual practice is far from what is proclaimed and embodied in the

¹¹see The Incidence of Sexual Slavery in Africa: Sexual Abuse of Women in Cameroon. - ECA/ATRCW/3.5 ii (a)/88/1

Constitutions and the general law of African countries. The situation is even more so when the relations between people are governed by customary law and even in those communities where there are such specific institutions as the Queen mother known as *ohemaa* among the *Ashanti in Ghana* who is said to have supreme power in all women's affairs.

Many authors¹² point out to the worrying laxity of the police to deal with sexual offences against women as well as the troubling laxity of the courts in convicting the offenders of such crimes. This environment causes sometimes the incidence of wife beating by the angry husband just in the court itself as was the case in Egypt.¹³ More often the official attitudes reveal themselves not so openly but just by neglecting the complaints of the women on various pretexts or by choosing a less punishable offence for conviction of the offender (this is possible due to the existing confusion in the definitions of various sexual offences against women and their *corpus delicti* as well as the specific nature of and the requirements to the evidence which is necessary to prove this type of crimes) or simply by reducing the applied sentence on the grounds that the victim was a married woman or that the offender was a young man of previously unblemished behaviour or that the attempted rape was unaggravated.¹⁴

There is an opinion that the standard of evidence in sexual offence cases is very high and does not correspond to the nature of the crime what allows many offenders to avoid a just punishment.

Many authors provide examples of general attitudes towards violence against women within the society and family. It may be considered to be a psychological paradox but people, including the victims themselves and even the parents of young girls, prefer not to speak about it and not to report on such cases when they occur. In African communities, such practice is very common because the victims of violence are quite often degraded by the society in general. In case of young African girls, the fact that they have been sexually assaulted may cause even the reduction of the bride-price to say nothing about moral sufferings, shame and a serious psychological trauma which may cause abnormal sexual behaviour in future.

The majority of studies stress the idea that the law itself could not be successful in combatting violence against women. It must be supported by the mobilisation actions in other spheres of social and economic life.

The one which is the most urgent is the establishment of

¹²see bibliography No.1, 2, 3, 4, 10, 15, 17 in Annex 1

Also: Kahiko, Kathryn. A Lifeline for Rape Victims. - Kenya Times, October 24, 1991; Garande, Tinaye. Cases of wife-beating a cause for concern. - The Herald, Harare, October 30, 1991

¹³see bibliography No.13 in Annex 1

¹⁴see bibliography No.10, 11 in Annex 1

official and non-official counselling and legal aid centres where women would be able to find sympathy and qualified advice on what to do and how to do in case they have been subjected to violence. Such institutions already exist in Africa like, for example, an anti-rape organisation launched recently in Kenya by Ms. Fatma Abeyd or Musasa Project in Zimbabwe or a legal clinic of Prof. J.O. Akande in Nigeria and others. However, their experience must be properly studied.

Another measure is the creation of shelter or refuge centres for women-victims of violence. There is an idea that such institutions might exist on the financial penalties applied to the offenders by the courts. However, in Africa there are almost no examples of such activities which would be possible to study and analyse.

Tentative recommendations

Summarizing the conclusions provided by the authors of various studies, it seems possible to recommend the following measures as priority actions to be taken in African countries:

- to review the current domestic legislation in order to:
 - (a) introduce a clear definition of violence into it, especially into the general part of the national Penal Codes;
 - (b) recognise violence as an aggravating factor leading to severer punishment when found in the *corpus delicti* of an offence;
 - (c) provide severer punishment when and if violence is directed against women, especially young girls, pregnant women, imbecile women, elderly women, and mothers;
 - (d) provide penalties for non-reporting on cases of violence thus recognising them as extremely dangerous for the well-being of the existing social order; or provide premiums for those who report on such cases (out of the funds formed from the financial penalties against the offenders) - (whatever is more appropriate or both)
 - (e) eradicate the parallelism of the two legal systems within African countries which is a symbol of their colonial past when its existence was justified by the interests of the metropolitan nation;
 - (f) make financial penalties an obligatory complement to the sanctions for violent offences; these money should be directed towards social support to the victims of violence and their children;
 - (g) eradicate the confusion in the definitions of various forms of offences against the life, health, security and dignity of the person by :
 - reducing the number of sexual offences up to

- three main forms such as sexual violence, indecent assault and sexual harassment;¹⁵
- differentiating the punishment for the crimes against the life, health, security and dignity of the person by the presence of violence, the sex of the victim (men, women), the age of the victim (child, teenager, adult, elderly), the mental condition of the victim (normal, imbecile), the physical condition of the victim (normal, handicapped), the condition of the victim with regard to motherhood (pregnant, mother);
 - (h) make it a rule of court procedure to conduct trials on sexual offences in *camera* excluding even the possibility for the offender to see his victim during the court hearings;
 - (i) make it a rule of law to conduct any police investigation and court hearing of cases on sexual offences in complete anonymity with regard to the identity of the victim;
 - (j) make it a rule of law to treat cases of domestic violence as criminal offences;
 - (k) make it a rule of law to impose such sanction as injunction on the offender in all cases of sexual offences;
 - (l) make it a rule of law to forbid withdrawal and closure of cases on violence even on the request of the complainant;
- To urge the governments to find the ways for eradicating violence from the pages of newspapers, journals, books, in the TV and videoprogrammes, and at the cinema when it is too natural and detailed as well as when it remains unpunished; to propagate in the mass media high penalties received by the offenders for their violent crimes and sensitize the society on the economic, social and moral consequences of violence against people and our environment;
 - To urge the governments to assist in the establishment of official and non-official counselling for the victims of violence including the organisation of legal aid centres

¹⁵Here, "sexual offence" means any offence committed against the person as a representative of his or her sex and for the sex related purpose; "sexual violence" means a violent sexual offence (i.e. sexual offence which involves violence on behalf of the offender); "indecent assault" means sexual violence which has not been completed due to any reason; "sexual harassment" means non-violent sexual offence (i.e. sexual offence which does not involve violence on behalf of the offender but which humiliates and degrades the victim as a representative of his or her sex).

and agencies; to create favourable working conditions for such institutions and their staff including financial and administrative support;

- To urge the governments to establish shelter and refuge centres for the victims of violence; to create favourable working conditions for them and their staff including financial and administrative support; to direct part of the money from financial penalties against the offenders in violent crimes towards such institutions.

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