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THE LEGAL HURDLES IN DETERRENCE OF RAPE CRIMES IN TANZANIA

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Abstract

Tanzania faces many legal, cultural and societal barriers that make rape prevention challenging. Even though Tanzania has laws that aim to deter crime by imposing severe penalties a minimum of thirty years and a maximum of life in prison as well as fines, reparations, and corporal punishment, the number of rape events in the country continues to rise. Legal obstacles to deterring rape crimes in Tanzania affect the laws and organizations that oversee the prosecution of rape cases. The article shows that although the law defines the crime and lays out severe penalties, rape crimes are nevertheless common. And the author came to the conclusion that the absence of laws that forbid rape offenses, the absence of a time restriction, the availability of bail in rape cases, the complexity of the legal process, and the impact on statutory rape make the law in terms of punishment ineffective in deterring rape offenses. The punishment of rape cases in deterring rape crime was also impacted by legal effects such as noncompliance with the four-hour rule, out-of-court negotiations, irreversible mistakes and contradictions of the ingredients of rape as defined by statute and court practice, corruption, and failure to report rape cases.

Key Terms: Crime, Rape, Deterrence and Legal Hurdles

Introduction

Despite significant advancements in the battle against sexual assault, rape is still a major problem in Tanzania. The legal system has established policies and processes to stop rape, but there are still significant barriers to their application and enforcement. Some of these challenges include a lack of resources for law enforcement, lengthy and complex legal processes, and societal attitudes toward rape that may make it challenging to report and prosecute. This article looks at these problems and suggests some solutions to deter rape in Tanzania.

DESCRIPTION OF THE KEY TERMS ON DETERRENCE OF RAPE CRIMES

Concept of Crime

The term crime does not have a universally agreed-upon definition. Various scholars have defined it based on their philosophical perspectives and the societal contexts from which they originate. One widely accepted definition of crime is that it refers to behavior

prohibited by the criminal code¹. It encompasses actions deemed harmful enough by judges or legislators to warrant criminal prosecution.² So, as an act, default or conduct prejudicial to the community, the commission of which renders the responsible individual liable to by fine or imprisonment.³

The key features of a crime include harmful conduct which involves harm caused by human actions that the state seeks to prevent, which involves the threat of serves as a deterrent against harmful conduct and legal proceedings which involves special legal processes are used to determine the guilt or innocence of the accused before imposing punishment⁴. In the context of criminal law, crime is viewed as part of public law which includes administrative law, constitutional law, and criminal law. Criminal

¹ Michael J et al (1935) *crime Law and social science international Journal of ethics* vol. 46 No. 1 Oct (1935) pp.109-114.

² Ormerod D at al., 2020 *Smith Hogan & Ormerod's Text, Crime and material on criminal law, Butterworth USA* p.6

³ Osborn P.G. *Concise Law dictionary* 5th Ed.

⁴ Osborn P.G. *Concise Law dictionary* 5th Ed.



law is designed to protect the public interest by outlining the duties individuals owe to society. It is distinct from civil law, which focuses on the rights of individuals in private disputes⁵. The criminal law system, also referred to as penal law characterized by the imposition of punishment, which can range from execution and imprisonment to fines, depending on the offense and jurisdiction.

Rape

In its most basic form, rape is defined as unconsented sexual contact between a mature male and a mature female, or between a mature male and a girl who is younger than the majority. It entails any male organ's small penetration into the female vaginal organ.⁶ Despite harsh penalties including life in prison, physical punishment, and victim compensation, rape crimes are nonetheless common and have long been a major issue for law enforcement. Legal Aspects of Rape: In order to prove the crime of rape, several components must be demonstrated, including the degree of penetration, no matter how small.⁷ Consent for women above the age of majority, absence of consent must be proven and for girls below the age of majority, consent is irrelevant,⁸ Proof of age on which the victim's age must be clearly established.⁹

When a minor is the victim of rape, proof of age becomes essential to the case; if the victim's age cannot be established, the accused may be found not guilty.

Additionally, when feasible, corroborated evidence such as confessions, medical records, and other types of confirmation is crucial. However, not all situations will require medical evidence or other forms of corroboration because it is feasible to prove rape without a medical report. In rape crimes, the victim provides the genuine evidence of rape, and a conviction can be based on a single witness.¹⁰ It is crucial to properly identify the accused as the rapist, particularly if the crime was committed in a place with limited visibility. When the victim and the perpetrator are strangers, this is typically necessary. The victim must provide characteristics that allowed the rapist to be identified in the event of *Samwel Kivike vs. Republic*¹¹ It was stated that even though the victim was raped, the appellant was acquitted because he was unable to identify the perpetrator. Watertight proof, or strong and decisive evidence, is essential for conviction. Given the nature of rape crimes, which involve accusations that are simple to make but frequently challenging.

When it comes to dealing with sexual offenses, including rape, Tanzania's legal system centers on three key actors: law enforcement, which is crucial in looking into rape crimes, gathering evidence, and catching suspects. To guarantee that rape

crimes are successfully prosecuted, law enforcement must be thorough in their evidence collection.

The judiciary, where Tanzanian courts decide rape cases based on the evidence that is offered. Judges evaluate whether the prosecution has effectively demonstrated each of the components of rape, including as penetration, lack of consent, and victim age,¹² and correctional services, as Tanzania's penitentiary system is in charge of rehabilitating those who have been found guilty of rape. Long periods of incarceration are part of the sentencing process, and in cases of extremely serious crimes, life sentences may be imposed.¹³

Deterrence

This is explained in black law dictionary¹⁴ to refer to the intention of criminal law in general or of a particular conviction and punishment to deter criminal activity. To put it another way, deterrence is the idea that criminal penalties not only affect the individual who is punished but also those who could commit the same crime in the future by making them fear punishment for the same offense. According to the deterrence hypothesis, harsher penalties will discourage criminal activity more than less severe ones.¹⁵

The Legal Provisions Governing Rape Crimes in Tanzania

The elements of rape and rape crime are addressed in the Penal Code in order to deter rape offenses, which are covered below. Section 130 of the Criminal Procedure Code¹⁶ establish a variety of criminal offenses with their rape-related components in criminal processes. In order to enter a guilty plea, a person must also acknowledge that they have committed the offense's components, each of which has a maximum penalty associated with it. Illicit carnal knowledge of a woman or girl, either with or without her consent, or with her consent if it was obtained by force, threats, intimidation, fear of bodily harm, false representations about the nature of the act, or, in the case of a married woman, by personating her husband, are the ingredients of rape.¹⁷ Even if a guy is separated from his wife and engages in sexual activity with her without her consent, it is still illegal to commit rape.¹⁸

Additionally, the state prohibits any sexual activity that was secured through the use of force, threats, or intimidation by making the victim fear harm or death. In certain cases, consent obtained from an incompetent or while the victim is intoxicated is deemed void.¹⁹ Additionally, rape is a felony that occurs when a girl under

¹² Section 13(1) of Cap. 16 [R.E 2022].

¹³ Section 114(1) of Cap. 6 [R.E2022].

¹⁴ Black Law Dictionary 8th Ed. St. Paul, MN: West Publishing Group, 2004.

¹⁵ BEN, Johnson. *Theory of Criminal Deterrence as a Factor in Changing Criminal Justice Police*, MN.2019.

¹⁶ Cap. 16 R.E 2022.

¹⁷ Section 130 (2) of Cap. 16 [R.E 2022]

¹⁸ Section 130 (2) (a) of Cap. 16 [R.E 2022]

¹⁹ Section 130 (2) (c) of Cap. 16 [R.E 2022]

⁵ Smith E. et al (2005) *Criminal Law 11th Edition* p.614.

⁶ TITO PAULO KUCHUNGURA vs. *The Republic Criminal Appeal No.570 of 2020 and section 130(4) of Cap. 16*[R.E 2022].

⁷ Section 130(4) of Cap. 16 [R.E 222].

⁸ Section 130(2) (a) and section 130(2) (e) of Cap. 16 [R.E 2022].

⁹ Solomon Mazala vs. *Republic, Criminal appeal No. 136 of 2012.*

¹⁰TLR (2006) 379

¹¹*Criminal Appeal No. 320 of 2015.*



the age of eighteen gives her assent to sexual activity with a person under the age of eighteen (18), which is known as unfree consent.²⁰ The law again declares that sexual intercourse obtained from the person who is under the authority of the person²¹ When a member of the staff of a women's or children's institution, a remand home, or another place of confinement created by law, abuses his position by raping any female inmate in the remand home.²² And whoever management or staff of a hospital, school, day care center, children's home or any other institution, organization or agency where there is a duty of care, takes or advantage of his position and commits rape on a girl or woman.²³ Also another act with constitute rape is that being a traditional healer takes advantage of his position and commits rape on a girl or a woman who is his client for healing purposes²⁴ and being a religious leader takes advantage of his position and commits rape on a girl or woman.²⁵

The ways which rape as a crime can be proved before the court of law as the penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence²⁶ and evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent. The provision of Section 131 of the Penal Code²⁷ stipulates that the perpetrator of rape in Tanzania faces a life sentence in prison, or a minimum of thirty years in prison with corporal punishment, a fine, and an additional order to compensate the victim for the harm caused by the crime, as decided by the court.²⁸ Additionally, if a male under the age of eighteen commits the offense, he will get a sentence of corporal punishment alone for the first offense and a 12-month jail sentence with physical punishment for the second offense. If a recidivist who has committed crimes three times is given a life sentence.²⁹ a person who commits an offence of rape of a girl under the age of ten years sentenced to life imprisonment and payment of compensation³⁰. If a group of people commits rape, each member of the group who commits or aids in the commission of the crime is found guilty of gang rape and given a life sentence in prison. If a person under the age of eighteen is involved in the commission of gang rape, the court may, instead of imposing a prison sentence, impose corporal punishment depending on the role they actually played in the rape.³¹

Tanzania makes rape a crime and punishes those who commit it with harsh penalties, including as life in jail, corporal punishment, and fines. In Tanzania, it is illegal for a husband to rape his wife.

²⁰ Section 130 (2) (e) of Cap. 16 [R.E 2022]

²¹ Section 130 (3) (a) of Cap. 16 [R.E 2022]

²² Section 130 (3) (b) of Cap. 16 [R.E 2022].

²³ Section 130 (3) (c) of Cap. 16 [R.E 2022].

²⁴ Section 130 (3) (d) of Cap. 16 [R.E 2022].

²⁵ Section 130 (3) (e) of Cap. 16 [R.E 2022].

²⁶ Section 130 (4) (a) of Cap. 16 [R.E 2022].

²⁷ Section 130(4) of Cap. 16 [R.E 2022].

²⁸ Section 131 (1) of Cap. 16 [R.E 2022].

²⁹ Section 131 (2) of Cap. 16 [R.E 2022].

³⁰ Section 131 Cap. 16 [R.E 2022].

³¹ Section 131A of Cap. 16. [R.E 2022]

Based on the definition of rape and the language used above, it seems that the Penal Code³² excludes the notion of non-consensual sex in marriage. If anything, it suggests that a married man could, if he so wishes, use threats or intimidation to induce his wife to have intercourse with him and this would be within the law.

LEGAL HURDLES IN DETERRING RAPE CRIMES IN TANZANIA

Tanzania faces legal hurdles in deterring rape crimes in Tanzania despite of having the legal provisions which provide crimes and its punishment for rape as examined hereunder:

Lack of Provisions that Provide for Prevention of Rape Offences

Notwithstanding the provisions regarding rape under sections 130 and 131 of the Penal Code²⁹⁹

This makes it illegal to have sex with a woman without her agreement and stipulates that the punishment for doing so is at least thirty years in prison, with the possibility of additional punishments like corporal punishment and fines. Since rape is one of the crimes in Tanzania that carries a maximum of life sentence if proven in court, the incorporation aims to discourage and lessen rape-related offenses. The Act failed to provide special provisions which specifically focus on prevention of occurrence of rape crime in the country. Example an act could have a provision which criminalize a male madrassa teacher to be alone in a teaching class without been accompanied by a female. Additionally, it has been somewhat successful in lowering rape offenses in some Tanzanian regions, but there are also some signs that suggest that rape offenses are rising in spite of the severe penalties that are in place. The article also demonstrates that the government should prioritise preventative measures as a last choice after determining the underlying cause and establishing preventive measures in order to effectively deter rape crimes.

According to the article above, there are no legal provisions that offer preventive measures to stop rape offenses from being committed.

Lack of Legal Provisions that Provide Time Limit on Prosecution of Rape Crime

Notwithstanding the requirements of the Criminal Procedure Act and Sections 130 and 131 of the Penal Code, which outline the steps for criminal prosecutions, trials, and investigations as well as the provisions for judgments and sentencing. There were no legal provisions in the legislation that established a deadline for rape trial. As the essay demonstrates, it takes a long time to investigate and prosecute rape crimes, which has an impact on the community's ability to deter such crimes.

The article also demonstrates how the community is not taught the gravity of rape crimes when they take time to complete since the time needed for the commission and the time needed for judgment

³² Section 131A of Cap. 16. [R.E 2022]



causes people to forget that a crime has been committed. Therefore, the paper concluded that the primary legal elements influencing the nation's deterrence of rape crime are the absence of laws that offer a quick track on rape crimes and set a time limit for their prosecution.

Lack of legal Provisions that Provide Conditions of Bail on Rape Crime

The Criminal Procedure Act, Section 148³³ which allows for bail omitted some crimes that are not subject to bail, like as treason, armed robbery, and murder. Rape crimes are therefore subject to bail. Therefore, the legal issues are the absence of particular regulations that stipulate bail conditions for rape offenses as a means of discouraging offenses. It is so impossible to dissuade the crime of rape when the accused person is arrested by the police and then appears in public a few days later, making the offense commonplace like all other offenses. Even though the accused would eventually be found guilty, the community already believes that rape is no more serious than other crimes. In addition, the respondent believed that if an offender is released on bail and resides in the same home as a victim, there may be family-level negotiations to drop the case. In this scenario, the case remains pending in court without a decision being made, and it will eventually be withdrawn under section 225 of the Criminal Procedure Act, leading to the offender's discharge and the court not punishing him. The above article indicates that lack of clear provisions which would provide conditions of bail to the offenders of rape led to the legal implications on deterring offences in the country.

Lack of specific guideline to be observed by magistrates in adjudicating rape crime.

The legal and institutional framework governing judiciary prohibition and punishing rape crimes in Tanzania can be overlooked to be effective as the government has enacted different laws which prohibit rape crimes in Tanzania.³⁴The first step is the implementation of laws that criminalize, forbid, and prosecute crimes in Tanzania. This is done in recognition of the necessity for order, peace, and a crime-free community. The Constitution in accordance with Articles 13 and 15³⁵

gives everyone in the United Republic of Tanzania the right to liberty and equality under the law. Therefore, the girl or woman has the freedom to pick who she wants to spend her time with and who she can have sex with, provided she gives her free consent. He believed that the National Prosecution Services (NPS) and other state agencies, such as the Police Department, the Office of the Director of Public Prosecution, the Judiciary, and the Correction Department, were tasked by the constitution with fighting and preventing crime. The DPP is duty bound to represent and prosecute all offenders of crimes on behalf of the republic and this

³³ Cap. 20 [R.E 2022].

³⁵ The constitution of united Republic of Tanzania Cap 2 of 1977 as amended.

include all rape incidents and offences.³⁶ Whilst the judiciary is mandated with the duty to dispense justice and during the dispensation of justice³⁷ the constitution requires it to be independent from other arms of the state³⁸ and not to be tied up with the legal technicalities.³⁹

Different periods, namely before and after the passage of the Sexual Offences (Special Provisions) Act, 1998 (SOSPA), demonstrate the efficacy of the laws guiding the prevention, trial, and prosecution of rape crimes as well as the gravity of the offense.⁴⁰ Although rape offenses were charged and prosecuted by the court, there were no severe laws in effect at the time because the court's discretion determined the appropriate sentencing. However, in order to safeguard the rights, welfare and dignity of women and children, SOSPA was passed in 1998 and came with harsher provisions. The legislation stipulates a minimum of thirty years in prison, with or without corporal punishment, and a maximum of life in prison, along with a fine to recompense the victim.

Following the SOSPA's inclusion in the Penal Code, the criminal code underwent modifications that made it necessary to expand the list of instances that can be shown to be rape offenses in Tanzania to include having sex with a woman without her consent,⁴¹

With a girl under the age of eighteen, with or without her consent, having sex with a woman after being drunk without her consent, or having sex with a mentally ill person. The amendment also includes other significant adjustments, such as the acts that can be considered rape incidents. For example, if a woman in a position of authority is forced to have sex with a man in his supervisory area without her agreement, it can be demonstrated to be rape.⁴² The ineffectiveness of the legislative framework controlling the prevention and prosecution of rape events. They believe that even if there are laws and organizations, like the police department, that are meant to prevent crimes and other incidents, rape and sodomy incidents are on the rise, regardless of how harshly the criminals are punished.

Considering that this is one of the areas where a high number of rape incidents have been reported, only more than 201 cases were reported in 2019, more than 161 crimes were reported in 2020, and more than 445 crimes were reported in 2021–2023, but only more than 210 cases were brought before the Nyamagana District Court, which accounts for all reported crimes. The article also discovered that, despite the fact that rape is a common crime in rural areas, particularly in Ukerewe District, Kwimba District, and Magu District, fewer rape crimes are reported because of a lack of information and communication between the parties.⁴³

³⁶ Article 51 of Cap.2 of 1977.

³⁷ Article 107A (1) Cap. 2 of 1977.

³⁸ Article 107B of Cap. 2 of 1977.

³⁹ Article 107A (2) (e) Cap. 2 of 1977.

⁴⁰ Act No. 4 of 1998.

⁴¹ Section 130 of the Penal Code Cap 16 R.E 2022

⁴² Ibid, Section 130 (3)

⁴³ Police Force Annual Crime Report 2022-2024, also see, Violence against

Another barrier that makes the laws that prevent rape crimes ineffective is the underreporting of rape crimes. Unreported rape cases escalate the issue and reduce the likelihood that the lawbreaker will be punished.⁴⁴ Causes of under reporting in rape crime is due to fear of stigma or retribution from the perpetrator or the community and defense lawyer. According to the Police Report⁴⁵

According to the Police Annual Crime Report of 2019, there were more than 7837 rape events in Tanzania, and sources indicate that the Mwanza region had more than 756 reported rape crimes. This indicates that rape cases have been rising rather than falling between 2019 and 2023.⁴⁶

The number of rape crimes in Tanzania increased between 2019 and 2023, with the majority of these crimes occurring in the Mwanza region (8654 and 876 recorded crimes, respectively).⁴⁷

It is clear from the aforementioned article that rape offenses are common in Tanzania even though there are laws and courts that regulate their prohibition and prosecution. The Constitution assigns distinct responsibilities to various governmental arms and agencies, including the legislature, which is responsible for passing laws, the executive branch, which is responsible for enforcing them, and the judiciary, which is responsible for interpreting and administering justice to the populace. Therefore, the police force is tasked with stopping, looking into, and bringing criminals before the law, and the prosecution is tasked with bringing the crime before the court, which has the authority to assess and analyze the evidence before convicting or clearing the accused.

Complex Procedures on Proving the offence Rape

In the penal code, Section 130(4)⁴⁸ stipulates that, without demonstrating physical aggression against an offender, even a small amount of penetration is sufficient to establish a rape offense. However, there are intricate processes for establishing rape that are not covered by the law. For example, rape crimes are notoriously hard to prosecute because of a number of reasons, such as the fact that many crimes lack tangible evidence and that the victim's testimony is often the only proof, making it challenging to prove beyond a reasonable doubt. Before convicting someone of rape, Tanzanian courts demand solid, indisputable evidence. This comprises medical records, supporting documentation, and a detailed analysis of the events leading up to the occurrence, including a description of what happened to the victim's female organ.

Legal Effect on Incorporation of Statutory

children rises, LHRC report shows visited on 12th March 2024

⁴⁴ <http://www.sciencedirect.com>.

⁴⁵ Police Force report: Crime Report 2023.

⁴⁶ Police Force Annual Crime Report 2019-2020.

⁴⁷ Police Force Annual Crime Report 2022-2024, also see, Violence against children rises, LHRC report shows visited on 12th March 2024.

⁴⁸ Cap. 16 [R.E 2022].

Rape

Tanzanian regulations state that a woman must be at least eighteen (18) years old to provide her effective consent to sexual activity. However, a male who engages in sexual activity with a woman who is younger than eighteen is committing statutory rape. The legal prohibition against engaging in sexual activity with a minor or anybody else who is thought to be incapable of understanding the physical and other repercussions of the conduct is known as "statutory rape." According to the report, the inclusion of statutory rape in Tanzania's penal code has mostly made the issue worse because young people between the ages of 19 and 25 are typically the ones who perpetrate statutory rape.⁴⁹ The article goes on to show that the inclusion of statutory rape in the penal code has detrimental effects and no deterrent effect because statutory rape is a common crime, particularly among teenagers, and it is committed by boys even when they are under the legal age of majority, leaving the girl they had sex with unpunished. The respondent believed that a girl under the age of eighteen should be prohibited from engaging in sexual relations by law in order to properly prosecute statutory rape.

Failure to comply with four hours rule in taking caution statement of accused person

According to the article, one of the legal and practical difficulties the criminal justice system faces when prosecuting rape offenses is the possibility of legal errors made by the investigation department due to noncompliance with section 50(1) of the Criminal Procedure Act, which stipulates that the accused person has four hours from the time of arrest to provide a caution statement. Offenders confess to committing the offense in the majority of caution statements, which are taken out of time. Even if the accused confesses to raping the victim, the cautionary statement will not be accepted as evidence if it is taken outside of the allotted period.

It is difficult to prove such an offence, especially when it is necessary to support the victim's testimony with a medical report. The findings indicate that some police officers who investigate crimes are unaware of the requirements that can be met when the rape offence is reported, so they end up investigating and bringing the file to the prosecution office without any important facts about the case because they occasionally delay or forget to make sure that the doctor who examines the victim fills out the PF3 properly.⁵⁰ The article also discovered that in many cases, an accused person convicted in lower courts may be acquitted in a high court or court of appeal because the prosecution side occasionally encounters issues, such as the inability to obtain key witnesses, which results in the accused person being acquitted.

In the case of *Abubakary Sadick @ Mangi vs. Republic*,⁵¹ In the subordinate court, the accused was found guilty of rape and

⁴⁹ Police Force Annual Crime Report 2022-2024, also see, Violence against children rises, LHRC report shows visited on 12th March 2024

⁵⁰ Police Force Annual Crime Report 2022-2024, also see, Violence against children rises, LHRC report visited on 12th March 2024

⁵¹ Criminal appeal No.311 of 2020[2024] TZCA 621 (19, July 2024).



sentenced to a minimum of thirty years in prison. He appealed to the high court, but his appeal was dismissed. He then appealed to the court of appeals, where he was found not guilty because the prosecution failed to call an investigator who could explain the reason for his arrest, as he claimed during his defense that he was arrested for gambling. The accused in this case was not unfamiliar to the victim, and all the evidence pointed to the fact that he had raped the victim.

Also, in the case of Juma Hamidu vs. Republic⁵² the appellant's grounds for appeal included the following: major or complex questions of fact and/or law are involved; where the sentence is severe, the court should hear the appeal rather than summarily dismiss it; and the High Court and the lower court both erred in law by convicting the appellant based on evidence of PW2 (henceforth referred the victim), which was insufficient to prove the offence alleged beyond all reasonable doubts.

The Presence of out of Court's Negotiations between the Victim and the Offender

In the majority of crimes, the victim and the perpetrators bargain outside of court without the prosecutor or the court knowing. The results indicate that the victim, who reported being raped, was paid Tanzanian shillings five million to drop the case after the investigation was finished. The victim is a key witness in the rape case, but she never showed up despite initially providing corporation because she blocked communication. and the lawsuit will ultimately be dismissed in court in accordance with section 225.⁵³ For lack of prosecution, the accused was released. Because the accused person leaves the courtroom without punishment, the acquittal of the accused without a merit-based trial sends no messages to society and contributes to the high rate of rape episodes in Tanzania because the public is unaware of the punishment meted out to the perpetrator.

Negotiations and agreements made outside of court cause witnesses to be uncooperative. According to the article, 90% of respondents from police desks and non-governmental organizations that support women's and children's rights believed that most reported incidents lacked follow-ups because of negotiations between the families of the victims and the offenders, which later. And occasionally the problem arises when the parties discover that the victim and the perpetrator have been dating for a long time; as a result, the case ends in a natural death.

In the case of Cyprian Justine Tarimo v. Republic⁵⁴ The appellant acknowledged that he was PW1's boyfriend and that he had multiple sexual encounters with her prior to the incident. He further contended that the case against him was made up out of rage because he had severed his relationship with PW1, who had written to him in June 2001 to complain about the situation. The appellant contested the argument that his conviction was supported by implausible evidence by submitting the aforementioned letter of

complaint from PW1 as exhibit D2. That, he contended, was untrue since the prosecution's witnesses disagreed on crucial points of the case. According to the court, if the prosecution's case was seriously damaged due to the apparent discrepancies, then it was not proven to the necessary standard that PW1 stated that the appellant gripped to her in an attempt to hold her back when PW2 and PW3 entered the residence. PW4 refuted this evidence by stating that the appellant promptly freed PW1 as soon as he entered the residence, and she quickly fled. Thus, the appellant was found not guilty

The Acquittal of the Offenders due to Incurable Errors

According to the article, subordinate courts can make irreversible mistakes in the law, such as convicting an accused person or people based on the testimony of a minor who has not promised to tell the truth. This evidence was previously illegally maintained and may be expanded from court records, and if no additional evidence is found to support the case, the accused person may be exonerated. In the case of Antho Edson Mlay vs. R⁵⁵ The accused was found not guilty because the victim, who was very young, testified in court without swearing to speak the truth, which was against section 127(2) of the Evidence Act. If the PF3 is admitted incorrectly, the prosecutors will be challenged and may be able to get the appellant released in the appeal.

In the case of Alfeo Valentino vs. R⁵⁶, One of the grounds for the appellant's conviction in this case was that "the two courts below erred in acting on exhibit P1 (the PF3) which was irregularly admitted in evidence without the appellant being informed of his right to have the doctor summoned under Section 240(3) of the criminal procedure Act." He was found guilty in both the resident magistrate court and the High court on appeal.⁵⁷

According to the Court, the accused must be made aware of his right to cross-examine by the trial court as soon as the medical report known as the PF3 is admitted into evidence. Therefore, such a report cannot be used as evidence if it is received without adhering to the requirements of section 240(3). We firmly believe that the PF3 has absolutely no weight in this instance, even if it is not discounted. The reason for this is that PW1 was inspected five days following the purported occurrence. Consequently, the appeal was granted.

The researcher found that public prosecutors find it difficult to prove their case because of some judicial officers' irreversible mistakes in lower courts. This is because some of them are unaware of certain procedural statutory requirements that must be followed during the trial of rape offenses. As a result, the appellant is acquitted on technical grounds once the case is appealed in the high court or court of appeal, which fails to provide justice to the victims of rape.

Contradiction of ingredients of rape as

⁵²Criminal Appeal no.67 of 2001, CAT at Kigoma.

⁵³Cap. 20 [R.E 2022].

⁵⁴ Criminal Appeal No. 226 of 2007

⁵⁵Criminal Appeal No.41 of 2023.

⁵⁶[2006] HCD 92.

⁵⁷Cap.20 [R.E 2022].



reflected in the statute and the practice

The elements of rape, as defined by section 130 of the Penal Code, such as the victim's age, forced sexual contact, and penetration, run counter to the court's practical requirements for establishing the alleged offense, which include establishing the accused's identity, naming a suspect as soon as possible, and failing to call a witness the court deems relevant. According to the article, these inconsistencies made it difficult to prove a sexual offense, which led to the acquittal of accused individuals.

Another practical issue that creates a loophole in acquitting the accused despite the fact that he has committed the offense is the failure to name a suspect as soon as possible. In a case of Marwa Wangiti vs. Republic.⁵⁸ According to a principle established by the court of appeals, a witness's ability to identify the suspect as soon as possible ensures that their testimony is reliable and that the court will believe that the witness is speaking the truth. But on numerous occasions, the court has cleared the accused for failing to bring up the suspect as soon as feasible, as was the case in the lawsuit in the case of Sadik Hamis@Rushikana and 2 others vs. Republic.⁵⁹ The court found that failure of a witness to name a known suspect at the earliest available and appropriate opportunity renders the evidence of that witness highly suspect and unreliable.

The prosecution typically bears the burden of proof in criminal cases; they must appropriately construct the case and skillfully present it at the necessary standard of proof. It is not necessary for the accused to establish his innocence. It is his duty to either develop a plausible defense to refute the facts presented by the prosecution or choose to remain silent when asked to defend himself. The court is bound to ground a conviction on watertight prosecution evidence or acquit the suspect if the prosecution case is weak. Regarding penetration, the law makes it abundantly evident that penetration is the fundamental component of the crime of rape.

Thus, according to this article, one of the difficulties in prosecuting and outlawing rape offenses is the inability to provide evidence of all the elements included in the charge that is brought before the court, which nullifies all procedures and results in the accused being acquitted. The court of Appeal of Tanzania in the case of Riziki Damasi vs. R.⁶⁰ according to the court, a charge that is flawed and omits any of the necessary components of the crime, as in this instance, is irreparably flawed and cannot be fixed by the victim's evidence. In this instance, the accused was found not guilty because the court was unable to establish all of the elements. According to the research findings, the accused may be acquitted if there is a procedural irregularity at the heart of the case. Among other procedural irregularities, the accused individual was acquitted because the victim's testimony was excluded due to the failure to take it under oath.⁶¹ as it was held in the case of Elia

⁵⁸ Criminal appeal No. 6 of 1995[2000] TZCA 4

⁵⁹ Consolidated criminal appeal No.381,382 and 383 of 2017.

³¹⁹ Cap 16 R.E 2022.

⁶⁰ Criminal Appeal No.75 of 2011 Court of Appeal at Arusha

⁶¹ Interview conducted on July 2024 to a State Attorney from the National Prosecution Services.

Wami vs. Republic.⁶² the accused person who was found guilty of raping a three-year-old child was acquitted due to a number of irregularities, including failing to conduct voire dire (by the time voire dire was relevant), failing to call the doctor for cross-examination under section 240(3) of the CPA, and failing to follow section 210(3) of the CPA, which requires the magistrate to notify every witness that he is entitled to have his evidence read over to him.

Poverty

The rise in rape cases in Tanzania is that the majority of people lack legal knowledge about matters pertaining to criminal laws, which is exacerbated by poverty because sometimes girls are coerced into marrying a rapist in order for their family to receive dowry. The researcher unfortunately did not meet with this situation but got the information from the Police Investigator at Nyamagana police station gave testimony on occurrence of that challenge which defeat the interest of justice to the victim's side. So the provisions of the law are not suitable in our jurisdiction because of the poverty and ignorance of the victims.

Presence of Corruption

Corruption in the eyes of certain prosecutors, judges, and police personnel. The results demonstrate that rape victims are afraid to report their experiences to the police because of corrupt practices that allow the police to sabotage investigations and allow magistrates to clear the accused despite overwhelming evidence. As a result, even if the act is reported, nothing will be done to apprehend the rape perpetrator. Police are the government agency that receives the highest score for being among the most corrupt, according to the PCCB's 2019–2022 study.⁶³ Thus the victims of rape incidents especially when the incidents was done with the person who have money then the victims tend to fear of losing their time to report on crimes which will not lead to the attainment of his right. Thus, there is a need to reform or eliminate the corrupt acts which will taint the good picture of the police force which mean to serve the people and later end up serving a tiny number of individuals who have money and influence inside the country and thus will lead to inequality in the community. Additionally, the results demonstrate that some judges are still corrupt and will do all in their power to clear the accused even when the evidence against them is overwhelming. "This is a barrier to the prohibition of rape crime.

Failure to Report Rape Crime

Rape victims in Tanzania, particularly in the Mwanza region, did not disclose the crime. The results demonstrate that, despite the existence of a police gender desk, there is underreporting of rape crimes, particularly in rural areas where the geographic location does not facilitate prompt reporting of rape crimes. In most cases, rape crimes are committed by close relatives, so the victim is discouraged from reporting in order to conceal the shameful act, and even if she does report, she will not receive support from her family.

⁶²Criminal appeal No. 30 of 2011.

⁶³PCCB report (2022).



Ineffective Operations of Established Gender Desks

To combat gender violence, including rape and other forms of sexual assault, across Tanzania's various groups, the Tanzania Police Gender and Children Desks were founded in 2009.⁶⁴

Since police officers receive training on how to deal with victims of rape and other forms of sexual abuse, the setup has been successful. The results indicate that the gender desk faces difficulties because most people, particularly those living in rural areas, are unaware of it. Additionally, the gender desk was established primarily to encourage victims to report gender-sensitive crimes, such as rape and sexual violence. The gender desk is not a preventive measure; rather, it waits for the crime to be committed before providing a victim with pf3 and other medical treatment recommendations in a private room.

Conclusion and recommendations

The legal and institutional framework that governs the prohibition and prosecution of rape offenses in Tanzania is presented in this article. The article concluded that the law is ineffective in deterring crimes by prohibiting and prosecuting rape offenses; it establishes the offense, imposes severe penalties such as life, thirty years, and corporal punishment, and lays out the rules and procedures for prosecuting the offense, but sexual offenses, including rape, continue to be common. The high rate of rape crimes indicates that the law is ineffective.

In conclusion, there are still many challenges to be addressed in Tanzania's efforts to deter rape crimes through its legal system. Effective rape prevention necessitates a multifaceted approach that tackles societal perceptions of rape, enhances victim and law enforcement assistance and resources, and implements more efficient laws and regulations. By addressing these issues, Tanzania can create a society that is safer and more just for all of its citizens.

Recommendations

- (a) The government should continue providing professional training on the part of the investigators and prosecutors and the involvement of the prosecutor from the time the offence has been reported to the time of the investigation and collection of evidence so that the errors may be reduced. Unlike now only the police are involved in investigation although the prosecutor lead investigation sometimes some of police investigator are not competent enough to investigate the crime. They do not possess legal knowledge in collection of evidence to assure successful prosecution and conviction of the accused person.
- (b) In order to minimize mistakes, the government should keep offering professional training on the roles of investigators and prosecutors as well as the prosecutor's involvement from the moment the offense is reported

until the investigation and evidence gathering are complete. Unlike currently, when the prosecutor leads the inquiry, only the police are involved. However, occasionally, police investigators lack the necessary skills to look into the crime. They lack the legal expertise necessary to gather evidence that would support an effective prosecution and the accused person's conviction.

- (c) In order to help and encourage people to disclose their crimes and so lower the number of rape events in Tanzania, it is important to eradicate or combat corruption among the police and some court officers. Because of corruption, the majority of people believed that they would not receive the appropriate assistance even if they reported their experiences A rape conviction requires publicity. It is insufficient to merely render a verdict in public. The government ought to devise methods for promoting all convicted sexual offenders in the media. The public should have access to the rapist registry, which should be kept up to date by the government.
- (d) If at all possible, the judiciary should refrain from acquitting the accused for minor mistakes like failing to call a witness who was initially told the story by the victim. This is because the victim is the best witness in sexual offenses, so there is no need to search for other witnesses who were not present at the scene. This will raise the conviction rate and serve as a deterrent to potential rape perpetrators. The criminal process Act chapter 20. R.E 2022 should include a speed track in rape crime prosecution, which is the time frame for rape crime prosecutions to be concluded in court.
- (e) If the judiciary adheres to the principle that the victim is the best witness in sexual offenses, it should not rush to acquit the accused for small mistakes like failing to call a witness who was initially told the story by the victim. This is because there is no need to search for other witnesses who were not actually present at the scene. It should be included in the Criminal Procedure Act chapter 20. R.E 2022. The legislation should establish a speed track for rape crime prosecution, which is the time frame the crime must be resolved in court.

⁶⁴ Bowman, C.G (2003) *Theories of Domestic Violence in the African Context, Journal of Gender, Social Policy & the Law*, 11(2), 847-863.