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EXAMINING CHALLENGES THAT BARS CONSISTENCY IN SENTENCING FATAL ROAD TRAFFIC OFFENCES

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Abstract

Sentencing consistency is a fundamental component of criminal justice because it promotes equality before the law, predictability, judicial accountability and public confidence in the administration of justice. However, the sentencing of offenders convicted of fatal road traffic offences in Tanzania continues to raise concerns regarding the extent to which courts impose proportionate and reasonably consistent punishments in circumstances involving the loss of human life. Although, Tanzania has established a legal framework regulating road traffic offences and criminal sentencing, the existence of statutory provisions does not necessarily guarantee consistency in their practical application. Therefore, this article examines the challenges that bar consistency in sentencing fatal road traffic offences in Tanzania. It analyses, the legal framework governing such offences. Finally, propose recommendation and draw out the conclusion reached as sentencing disparities cannot be adequately addressed by concentrating exclusively on the discretion exercised by judicial officers. But, consistency requires a comprehensive and coordinated criminal justice process in which investigations, prosecution, trial procedures and sentencing decisions are guided by clear legal standards and reliable evidence.

Keywords: Fatal Road Traffic Offences, Sentencing Consistency, Judicial Discretion, Procedural Challenges, Road Traffic Accidents, Criminal Justice.

INTRODUCTION

Road traffic accidents remain a significant public safety and criminal justice concern in Tanzania. The increasing use of motor vehicles and motorcycles has heightened the need for effective regulation of road users and accountability for unlawful driving conduct.[i] Further, not every road accident constitutes a criminal offence, accidents resulting in death due to dangerous or careless driving raise important questions regarding criminal responsibility and appropriate punishment.[ii] The criminal justice system is therefore expected to ensure that offenders are held accountable through sentences that reflect the seriousness of their conduct, their degree of liability and the consequences suffered by victims and their families.[iii]

Furthermore, sentencing is a fundamental stage of criminal proceedings because it determines the punishment imposed upon an offender following conviction.[iv] Its objectives include punishment, deterrence, rehabilitation and protection of society.[v]Therefore, in fatal road traffic cases, sentencing requires particular attention because the offence results in the temporary loss of human life.[vi] However, the occurrence of death should not automatically justify identical punishment in every case, since the circumstances and degrees of liability may differ.[vii] For example, an accident resulting from momentary carelessness may involve a different level of responsibility from one caused by excessive speeding, dangerous overtaking or driving under the influence of alcohol.[viii] Accordingly, sentencing should reflect the particular circumstances of each case while maintaining fairness and consistency.[ix]

In Tanzania, fatal road traffic offences are regulated under sections 49 and 50 of the Road Traffic Act, which address causing death through dangerous driving and careless driving respectively.[x]Nevertheless, these provisions establish the legal basis for prosecuting fatal road traffic offences, their application does not necessarily guarantee consistency in sentencing.[xi]Again, delays in criminal proceedings and inadequate presentation of

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aggravating and mitigating circumstances may affect the court's ability to determine an appropriate punishment.[xii] These challenges demonstrate that sentencing outcomes are influenced not only by judicial discretion but also by the effectiveness of the investigative, prosecutorial and trial processes. The introduction of the Tanzania Sentencing Guidelines represents an important step towards promoting transparency and consistency in sentencing.[xiii] The Guidelines provide a structured approach to determining appropriate punishment by requiring courts to consider the seriousness of the offence, the offender's liability and the harm caused and relevant aggravating and mitigating circumstances.[xiv] Finally, their effectiveness depends on consistent implementation, proper judicial reasoning and the availability of reliable evidence. Therefore, this article critically examines the challenges that bar consistency in sentencing fatal road traffic offences in Tanzania.

LEGAL FRAMEWORKS GOVERNING SENTENCING IN FATAL ROAD TRAFFIC OFFENCES IN TANZANIA

The Fatal road traffic offence in Tanzania is governed through different legislation as provided hereunder;

a) The Constitution of United Republic of Tanzania, 1977 as amended 2005

This refers to the fundamental law, written or unwritten, that establishes the character of a state by defining the basic principles to which society shall conform, distribution of powers and functions among pillars of the state, by describing the organization of the executive, legislature and the limitation of different state organs and by prescribing the extent and manner of the exercise of its sovereign power.[xv]Further Article 13 of the Constitution of United Republic of Tanzania recognizes equality of human being and legal protection of individuals from their basic right.[xvi] Furthermore, the provision of Article 107 B of the Constitution creates a constitutional basis for judicial discretion to judges and magistrate in criminal cases as well as in civil cases.[xvii]

b) The Road Traffic Act Cap 168 R.E 2023

The Road Traffic Act was enacted purposely to promote roadworthiness standards, outlining the rules for vehicle registration, licensing, traffic control and enforcement mechanisms.[xviii] The Act, acknowledge offence resulted from reckless driving in aspect of causing death or bodily injury to the road users.[xix]The Act, the same have prohibited drivers driving under high speed exceeding limit, driving while taken alcohol, drugs, intoxicated failure to observe duties established by the law.[xx] The Act provides offences and penalties to drivers as per enforcement mechanisms the minimum sentence is imprisonment of not exceeding two year or twenty thousand shillings.[xxi] Therefore, the Act did not establish each offence with its penalties thus judges and magistrate opts to use discretions in some cases.[xxii]

c) The Penal Code Cap 16 R.E 2023

This Act was enacted purposely to define or establish offences and provides penalties thereof aiming at prohibition, deterrence, incapacitation, rehabilitating, retribution and restorating the offender to so that could return to the society abide laws and not cause trouble again.[xxiii] The Act, prohibit drivers from using road in manner that endanger human life and harm persons.[xxiv] However, the Act establishes six months imprisonment in respect to endanger of human life and harm resulted from negligent driving.[xxv] The same, the sentencing established in Penal Code does not look the same with the sentence established by the Road Traffic Act, thus inconsistency and judicial discretion comes.

d) The Criminal Procedure Act Cap 20 R.E 2023

The Criminal Procedure Act governs criminal proceedings, including investigations, trials and sentencing. Sections 236 and 320 are relevant to sentencing because they are recognized in the Tanzania Sentencing Guidelines, concerning the hearing of parties before sentence is imposed.[xxvi]In fatal road traffic cases, these procedures allow the prosecution and defense to present aggravating and mitigating circumstances.[xxvii] Aggravating factors may include excessive speeding, drunk driving, dangerous overtaking and previous traffic convictions. Mitigating factors may include being a first offender, showing remorse, pleading guilty and cooperating with investigators.[xxviii] These considerations assist courts in determining appropriate sentences based on the circumstances of each case.[xxix] However, their effectiveness depends on proper presentation and evaluation of relevant information by the parties and the court.[xxx]

e) The Magistrate's Courts Act Cap 11 R.E 2023

The Act was established purposely to govern both criminal and civil cases that presided before District Court and Court of Resident Magistrate, Also, the Act provides for establishment of the Primary Court, District Courts and Courts of Resident Magistrate.[xxxi]The Act, establishes no way of exercising judicial discretion in cases which its sentence and conviction are shown as the means of avoiding unnecessary technicalities.[xxxii] The Act, in relation with the road fatal offenses acknowledge it through section 40 and 41 which establishes for the jurisdiction of district court in criminal matters while section 42 provides for the application of criminal laws and procedures in such court.[xxxiii]

f) Minimum Sentences Act Cap 90 R.E 2023

The Act, was established purposely to provide for limit of sentence and conviction on proportionality to offence which occurred also the Act, established to remove the unnecessary of judicial discretion to be exercised by judges and magistrate in making decision.[xxxiv] The Act, limits judicial discretion where the offence before the court falls within the statutory minimum sentence scheme.[xxxv] Further, determines the extent to which the court exercises discretion below the prescribed statutory minimum for circumstances affecting the application of the minimum sentence

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provisions to the extent that court to determine whether the statutory conditions for applying a minimum sentence are satisfied.[xxxvi] Therefore, the Act use to remove the chance of misuse of court procedures vested to judges and magistrate on umbrella of judicial discretion.[xxxvii]

g) The Evidence Act, Cap 6 R.E 2023

The Evidence Act governs the admissibility and evaluation of evidence in judicial proceedings. Its relevance to fatal road traffic cases arises from the need to establish the cause of death and the connection between the accused person's conduct and the accident.[xxxviii] Section 47 recognizes expert opinion evidence in matters requiring specialized scientific and technical knowledge.[xxxix]Such evidence may include post-mortem reports, medical findings, vehicle inspection reports and forensic accident assessments.[xl] These findings assist courts in determining the circumstances of an accident and establishing criminal responsibility also reliable expert evidence also helps courts distinguish between different traffic offences and assess the seriousness of the offender's conduct.[xli] Therefore, proper application of the Evidence Act promotes fair trials and ensures that sentencing decisions are based on established facts rather than speculation.

h) The Tanzania Sentencing Guidelines, 2023

The Tanzania Sentencing Guidelines, aim to promote fairness, consistency and transparency in sentencing, they replaced the 2020 Tanzania Sentencing Manual and provide a structured approach to determining appropriate punishments.[xlii] Under paragraph 2.3, courts are guided to consider the statutory penalty, seriousness of the offence, offender's liability, aggravating and mitigating circumstances, and other relevant personal factors. Courts may also consider compensation, restitution and reparation where appropriate.[xliii]In fatal road traffic cases, the Guidelines help courts distinguish between offenders according to the seriousness of their conduct. For instance, a driver who causes death through excessive speeding while intoxicated may deserve a more severe sentence than one whose negligence is less serious.[xliv] The Guidelines also recognize the importance of considering the emotional, psychological and financial effects of the offence on victims' families.[xlv] Nevertheless, their effectiveness depends on reliable investigations, appropriate charges and sufficient evidence.

CHALLENGES THAT BARS CONSISTENCY IN SENTENCING FATAL ROAD TRAFFIC OFFENCES

i. Difference in the Circumstances of the Cases

The fatal road traffic offences in Tanzania is mainly governed by the Road Traffic Act[xlvi] and in some cases by the Penal Code,[xlvii] however each Act, it provide different sentencing requirement in respect with reckless and dangerous driving which may cause death or body harm.[xlviii] Further, the inconsistence in sentence resulting from traffic cases is not only problem in Tanzania but also to other jurisdiction in which the practice has revealed that, the differences in circumstances of the cases makes the law being contradictive.[xlix]Thus, makes the judges and magistrate in sentencing of this case to use judicial discretion.[l]Furthermore, the judicial discretion enjoyed by judges and magistrate is not well defined and outlined hence inconsistency and sometime makes abuse of court process.[li] The case of Ali Mpaliko Kailu vs. Republic[lii] court showed that, the differences of circumstances of the case in which results from reckless and dangerous driving may bring different conviction and sentencing.

ii. Assessing Aggravating and Mitigating Factors

The road traffic offenders before and after the judgment is pronounced are given the chance to ask for mercy in respect to reductions of sentences.[liii] Consequently the court considers serious mitigating factors which seemed to be genuine resulting from previous record of the offenders,[liv] health status, family dependence and plea of guilty in which this reason makes judges and magistrate to reduce some sentences in contrast with the law requirement hence inconsistence and judicial discretion application.[lv] Nevertheless, the good character of the offender in criminal cases especially in road traffic cases has made the sentences to be informal from one judgment to another judgment within the same cause of actions.[lvi] However, not all mitigating factors are allowed by the court in road traffic cases and is not a remedy to escape criminal liability as provided in the case of Director of Public Prosecution vs. Michael Pius Babu[lvii] the court imposed three years cancellation of driving licence for causing death by careless driving, the offender before sentence have been passed raised mitigation factors by reason that he is going economic hardship so that the court should accord him a mercy but the court decided that, economic hardships is not a ground to avoid statutory cancellation adherence to precedence and public policy.[lviii] In Contrast, the mitigating factors in some traffic cases relieve the criminal liability as in case of Director of Public Prosecution vs. Paul Reuben Makujaa[lix] whereby Msumi Judge, provided that the a plea of guilty by an offender who caused death through dangerous driving does not always mandate imprisonment.

iii. Differences in the Interpretation of Statutory Provisions

The incorrect of interpretation of statutory provisions poses critical challenges in administration of criminal justice especially in interpreting Road Traffic Act, provision which establishes different sentences and punishment sometime judges and magistrate due to inconsistency articulated in laws use to follow to the extent injury caused and not the Act[lx]as decided in the case of Masumbuko Athuman vs. Republic[lxi] Chipeta Judge, quashed the conviction imposed by the district court on the aspect that speed was not proved and sudden emergency created reasonable doubt about dangerous driving in which the trial court imposed sentence on extent of injury occurred without proper reference to the statutory requirements. Further, the practice has revealed that, incorrect interpretation of statutory provisions had led to inconsistence of decision making and contradiction of legal precedence.[lxii] Furthermore, the inconsistency of the outcomes in criminal cases

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creates some rooms of abuse to judges and magistrate to overturn the legal provision for personal interest which undermine principle of legality.[lxiii]

iv. Availability and quality of Evidence

The consistency of sentence in road traffic offences have contribute much with the availability and quality of evidence which have to be brought before court of law.[lxiv] The inconsistencies which have been shown in road traffic cases mostly initiated through lack of enough evidence which moves the court to wait out the offences occurred through reckless driving or endanger driving which caused death or harm, the court encounters with some difficulties in imposing sentence which is very proportional to the offence committed.[lxv] Its relevance is provided through the case Hussein Kasimu vs. Republic[lxvi] the court decided that, the sentencing it depends with the genuine of the offence committed under which the offender is charged also should depends on the weight of evidence provided and measured by the court hence sentence can be passed. Therefore, lack of weighted evidence to prove road traffic offences deprives judges and magistrate ability to pronounce consistently judgments.[lxvii]

v. Legal Limits on Sentence Set by Law

This is another challenge concerns statutory sentencing limits the Road Traffic Act[lxviii]contains provisions prescribing punishment for particular offences while the Criminal Procedure Act[lxix] requires a court to pass sentence according to law.[lxx]Difficulties arise when courts have discretion within a statutory range and different judicial officers interpret the circumstances differently. A statutory range is necessary to accommodate different levels of liability, but a wide range also provides greater room for differences in judicial assessment as provided in the case of Aloyce $^{S}/_{O}$ Petro vs. The Republic[lxxi] whereby the court decided that, the magistrate have no discretion to impose excessive sentence above the statutory requirement without proper instructions provided by the law. However, it is clear that, the legal limit of sentencing if is provided by the statute there is no room for magistrate or judges to waive it.[lxxii]

RECOMMENDATIONS

Recommendation to the Government

The Government of the United Republic of Tanzania should provide to the Judiciary with adequate resources such as financial resources, infrastructures and other materials which will help to implement the existing legal and sentencing framework effectively. Further, to the Office of the Director of Public Prosecutions for professional sentencing practice, and to the Tanzania Police Force based for the investigation of fatal road traffic offences.

Furthermore, the Government should also support ongoing professional training for traffic investigators, prosecutors, and judicial officers that will ensure proper management of cases, which will minimize the inconsistency of sentencing before the court of laws.

Recommendation to the Legislature

Parliament should review the existing provisions including sections 49, 50 and 75 of the Road Traffic Act, in order to determine whether the statutory classification of fatal road traffic offences clearly distinguishes between reckless or dangerous driving, careless driving, and driving involving alcohol or drugs. Further, the review should particularly examine whether the language of these provisions sufficiently differentiates the degree of liability associated with conduct that results in death.

Furthermore, the Parliament should review the sentencing ranges and statutory minimum penalties for fatal road traffic offences to assess whether they provide sufficient parameters for courts to distinguish materially different cases. For instance, section 75(2) (a) of the Road Traffic Act, creates a minimum of three years without stating an express statutory maximum for death caused through dangerous driving. Moreover, the absence of a clear maximum sentence in the law may give courts too much freedom in deciding sentences, which can lead to different punishments for offenders who commit similar offences under similar circumstances.

Recommendation to the Judiciary

The Judiciary of Tanzania should develop more detailed sentencing guidance for fatal road traffic offences which should identify the principal aggravating and mitigating circumstances that may affect sentencing where supported by evidence. This means certain aggravating and mitigating factors should be clearly identified and linked to specific levels of punishment in the sentencing guidelines. This would help trial magistrates determine appropriate sentences, reduce uncertainty when making decisions, and reduce inconsistency in sentencing, thereby reflecting fairness and equality by law Further, the judicial officers should also record clear reasons showing how the applicable offence provision where a sentence is imposed above the statutory minimum or where the court distinguishes the case from comparable decisions. Furthermore, the Judiciary should further strengthen continuing judicial education on sentencing in fatal road traffic cases. Moreover training should emphasize the distinction between lawful individualized sentencing and unexplained sentencing disparities.

Recommendation to the Law Reform Commission

The Law Reform Commission of Tanzania should assess whether the current statutory framework adequately distinguishes between different forms and degrees of unlawful driving causing death and whether the penalties are commensurate with those distinctions. Further, the review should specifically consider the relationship between the statutory offences, the available sentencing ranges, and the discretion exercised by courts in determining sentences. Furthermore, should also examine whether differences identified in judicial decisions arise from genuine factual distinctions or from uncertainty in the interpretation and application of the statutory provisions

Recommendation to the Police Force

The Tanzania Police Force, particularly the Traffic Police Unit, should strengthen investigations into fatal road traffic offences by

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ensuring that investigation files contain sufficient evidence to establish both the offence and the circumstances relevant to sentencing. Investigators should systematically document, where applicable, speed, overtaking, intoxication, road and weather conditions, visibility, traffic signs, vehicle condition, driving manner, accident-scene evidence, and witness accounts.

The Police Force should provide traffic investigators with specialized training and appropriate equipment for accident reconstruction, speed assessment, alcohol or drug testing, preservation of accident-scene evidence, and collection of witness and vehicle information. Proper investigation is necessary because sentencing consistency depends, in part, on the court receiving reliable evidence on the conduct and degree of culpability in each case.

The Police Force should develop a standard checklist for investigating fatal road traffic offences to ensure that all important information relevant to sentencing is included in investigation files. This would help prosecutors and courts identify the differences between cases and reduce sentencing disparities caused by missing or inconsistent information.

Recommendation to the National Prosecution Service

The National Prosecution Service should issue clear professional guidance on sentencing submissions in fatal road traffic cases which should require prosecutors to identify the precise statutory provision under which the accused was convicted, the applicable sentencing range or minimum, the aggravating and mitigating circumstances established by the evidence, and relevant judicial decisions concerning comparable circumstances.

Prosecutors should also distinguish between circumstances relating to the offence and those relating to the offender. For example, excessive speed, dangerous overtaking, intoxication, multiple deaths, and the manner of driving should be presented as offence-related circumstances where established, while guilty plea, remorse, previous convictions, and cooperation should be addressed as offender-related circumstances where legally relevant.

CONCLUSION

The study concludes that, Tanzania had established legal framework governing sentencing for fatal road traffic offences, including the Constitution of the United Republic of Tanzania, the Road Traffic Act, the Penal Code, the Criminal Procedure Act, the Minimum Sentences Act, and the Tanzania Sentencing Guidelines. Further, the existing legal framework empowers courts to determine criminal responsibility and impose appropriate punishments while allowing Magistrates to consider the specific circumstances of each case. Furthermore, the legal framework is seemed to be weak and inconsistency hence the study proposes for strengthening consistency in road traffic offences legal and regulatory regimes.

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