

LAW ON CHILD RESTRAINTS IN TANZANIA: A SAFETY IMPASSE OF CHILDREN ON COMMUTE

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ABSTRACT

Road safety is one of the main critical issue of concern globally. This is so because, road clashes and clash-related fatalities topples the margins of death-causing factors not only in Tanzania but also in many parts of the world. The factors for road clashes and clash-related fatalities are said to be *inter alia*; over speeding, drink-driving, nonuse of helmets and protective head gears, non-use of seatbelts, nonuse of child restraint systems when carrying children, and destructed driving. This article attempts to discuss the safety quandary of child on commute in Tanzania. It brings to the fore the fact that, though, Children belong to the class of ‘vulnerable passengers’ who deserve special legal protection, the road traffic Act Cap 168 R.E 2002 does not provide for provisions for mandatory use of child restraint systems in both private and Public passenger vehicles. The article concludes that, the law needs to be revisited, and amended with the view to incorporate mandatory child restraint systems for private, and public vehicles as well as school buses. This will help to mitigate a great deal child fatality arising from road clashes.

Key Words; Road safety, Child restraints, Child fatalities, Road traffic Act, Tanzania.

INTRODUCTION

Road safety is the issue of public health concern not only in Tanzania but also internationally. It is the issue that has been given paramount importance due to the pitfalls associated with it if ignored for a single second. Tanzania is not spared from these pitfalls. Road traffic clashes and fatalities has been occurring every now and then.ⁱⁱ since the year 2018 road clashes has been

an issue of public outcry in Tanzania the causes of which range from drivers' over speeding, reckless driving, driving under influence of alcohol, failure to use seatbelt and nonuse of child restraint systems just to mention but some.

In this article, the author's focus is the safety of children on board/commute and how the laws at the global and local level have taken child safety agenda on board. It synthesizes the position of international standards *vis-à-vis* local legislations, with purposive glimpse on the experiences and practice in a selected few country with the view to showcase the policymakers what others have done to ensure child safety is guaranteed in enacting road safety laws, finally as the state will be in position to decide from which country, we can borrow a leaf.

More often, children have been seen not buckled in their seats, standing during the road trip and sitting between a car's front seats - all of which puts a child's safety at stake and in some other countries a breach of law. However, children are careless and are too young to take responsibility for their legal actions. But the driver of vehicle can and should. It's therefore important to note that kids have rights, as much as adults do; especially when it comes to road safety.

Presently, the road traffic Act (RTA) cap 68, the main piece of legislation governing road safety in Tanzania, has no provisions to address the safety of children who are the vulnerable groups in cases of clashes. The law does not adequately spell out how children on board should be protected. It neither imposes the duty to have child restraint systems in both private and commercial vehicles nor does it impose an obligation to school bus drivers on children on board.ⁱⁱⁱ Consequently, this has resulted to careless attitude to road safety, even by the most well-meaning parents. Travelling with children seated on front seats or on their parents' laps with no harness or seat-belt is never questioned.

Child seats are widely considered to be an extremely effective method of ensuring the safety of children, who are the most vulnerable to serious injuries and deaths in collisions, seated in vehicles.

The WHO's Global Report on the Status on Road Safety 2019 says that child seats can decrease the risk of death in a crash by 70 per cent for infants and 80 per cent for small children.

INTERNATIONAL STANDARDS ON CHILD RESTRAINT SYSTEMS AND STATE OBLIGATIONS


A standard is a technical documentation that sets forth minimum safety requirements that apply nationally. A standard usually defines how a law or regulation is to be implemented at local level. International instruments serve as benchmarks upon which countries can align their legal framework to make sure they meet their state obligations under the treaties.^{iv}

The Vienna Convention on Law of treaties^v requires all state parties to a treaty to obey it in good faith. This entails that, if a state like Tanzania has ratified^{vi} or acceded to any of the international road safety instrument, has the duty to take policy and legislative measures to adopt the standards set forth in the treaty.^{vii}

There are a number of laws and international policy instruments that spells requirements and standards for Child Restraint Systems. Some of these instruments include *inter alia*; United Nations Regulation No. 14^{viii} together with Reg. 44^{ix} sets parameters and minimum standards that devices for child occupants and child restraint systems should comply with. Article 3(4)^x provides that *the Approval Authority of a Contracting Party must verify, before granting type approval the existence of satisfactory arrangements and procedures for ensuring effective control so that child restraint systems, equipment or parts when in production conform to the approved type*. This means that, for countries like Tanzania, it will take as simple as depositing an instrument of accession^{xi} with the secretary general of United Nations to adopt these standards through legislation. Acceding to the 1958 and 1997 agreements entails that the decision to accede include whether the Country wishes to apply All of the UN Regulations to the Agreement, or A selection of the UN Regulations, the country deems most appropriate, or None of the UN Regulations.^{xii} However, Tanzania may withdraw from the treaty obligations any time.

The withdraw from the treaty may occur by giving a one-year notice to the secretary general of the United Nations of the party's intention to cease applying any of acceded regulation.^{xiii}

Figure 1. An Instrument of Accession^{xiv}



MODEL INSTRUMENT OF ACCESSION

(To be signed by the Head of State, Head of Government or Minister of Foreign Affairs)

[ACCESSION]

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date].

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[signature]

EU Council Directive 91/671/EEC related to the compulsory use of safety belts and child-restraint systems in vehicles, as amended by Directive 2014/37/EC^{xv} affirm that children less than 135 cm or 150 cm in height (this depends on the country) occupying M1,^{xvi} N1,^{xvii} N2^{xviii} and N3^{xix} vehicles shall be restrained by an integral or non-integral child-restraint system, suitable for the child's physical features. Where a child-restraint system is used, it shall be

approved to the standards of UN Regulation No. 44/03 or UN Regulation No. 129 or any subsequent adaptation thereto. EU Member States and any member state are allowed to decide the height limit of 135 cm or 150 cm, so this differs from country to country, and they can apply some other exceptions to the general rules, for example for children travelling in taxis. The categorization of vehicles is done by 2007/46/EC directive.^{xx}

These standards are very vital in a number of ways. Firstly, they act as safety measures for children on board. Once a child is buckled in the restraints, in case of a crash the damage is mitigated and there are high chances of survival as opposed to a situation when the child is not restrained. Also, the law poses a sense of responsible driving and caring among the drivers. It helps to remind the driver of his legal duty to keep safe all the onboard passengers. And thirdly, the law serves a deterrence role in such a way that, a driver will be compelled to use Child Restraint Systems (CRS) in fear of associated penalties for non-use. In all circumstances the end result is to keep the onboard child safe and to mitigate the damage associated with road crashes and accidents.

Thus, it is pertinent that Tanzania sees it important to legislate on CRS with the view to mitigate hazards associated with road crashes involving Children passengers aboard Sweden is regarded by EU as one of the safest countries in Europe as far as road safety is concerned. According to WHO global status report on road safety. In 1997, Sweden implemented “Vision Zero” a plan that has attracted international attention in hopes of eradicating all fatalities and injuries on roads. In recent studies, Sweden has been ranked by the EU to have the safest roads with only one fatality registered in 2015.

OTHER COUNTRIES INCLUDE;

IN GERMANY

All children younger than 12 years, who are shorter than 150 cm, must be transported in an appropriate CRS, approved in accordance with the UN Regulations Nos. 44/03 or 129 or any amendments to these UN Regulations.,

THE FEDERATION OF RUSSIA

Children under 12 years old and shorter than 150 cm must be carried in a child restraint device, in conformity with UN Regulation No. 44 series 04. According to the prevailing national legislation of the Russian Federation, the transport of children is allowed with the condition of ensuring their safety by taking into account features from the design of the vehicle. It is also a requirement that the transport of children up to 12 years old in vehicles equipped with seat belts should be carried out with the use of child restraints corresponding to the weight and growth of the child, or other means allowing to restrain the child by means of the seat belts provided with the vehicle design. Placing children in the front seat is only allowed with the use of child restraint. It is forbidden to transport children under 12 years old in the back seat of a motorcycle. Currently, in accordance with the Technical Regulations of the Customs Union^{xxi} child restraints must meet the requirements of the UN Regulations № 44-04. Russia is one of the countries that embrace laws that *ipso facto* protects young persons at times of road clashes. This practice has aided to avoid deaths arising from road clashes.

IN THE U.S.

State laws specify how children are to be transported in motor vehicles. Typically, children under a certain age are required to be restrained in accordance with requirements of FMVSS^{xxii} No. 213, Child restraint system compliant CRS or booster seat. The age which the child is required to be restrained in a CRS or booster seat varies by State and it typically ranges from 4 to 8 years old. Most states require children that are no longer required to be transported in a CRS or booster seat, to use a seat belt. Some states require children under a certain age, which varies by state, to be restrained in the rear seat. CRSs that are not compliant to FMVSS No. 213 are not permitted for sale and use in the United States.

EXPERIENCE FROM URUGUAY

The use of child restraint seats is mandatory according to the National Traffic and Road Safety Law^{xxiii} and its decree^{xxiv} for implementing the Law.

PRACTICE IN SOUTH AFRICA

As far as Africa is concerned, South Africa in October 2014 amended National Road Traffic Regulations of 2000, which are made under the National Road Traffic Act of 1996.^{xxv} The Regulations require that a driver of a motor vehicle must ensure that a child^{xxvi} in the vehicle use a child restraint if one is available or wear a seat belt in a seat that is equipped with one.^{xxvii} This law makes it mandatory for child occupants of the vehicle to be restrained by child restraint devices or seat belts depending with the age of the child. The National Road Traffic Act on car seats for kids have, under Regulation 213, defined a child as a person between the age of 3 and 14 years, unless taller than 1.5-metres. Contrasting to this, an infant is defined as a person below the age of 3 years. Child restraint shall comply with the standard specification SABS 1340 Child restraining devices in motor vehicle and bear a certification mark or approval mark. The standards under this law appears to derive compliance from UNECE regulations No. 14, 16 and 129. This is a good practice which Tanzania should be convinced to adopt.

The child restraint systems are made based on height of the child to make it easier for parents to choose the correct CRS. Parents often prefer to know the height of the child than the weight. A review of the inner dimensions and the belt adjustment options in the new UN Regulation No. 129 ensures that the product can be used for the specified size range. The maximum weight of the child, up to which the CRS can be used, ensures that all safety-relevant components, including vehicle safety-relevant components are dimensioned according to the total weight of the child and CRS. The categorization also reduces the number of too early changes to a new system.

EXPERIENCE FROM GHANA

The Road Traffic Act requires that drivers of motor vehicles transporting children ensure that the children use seat belts. This Law states that a person transporting a child between the ages of five and eighteen in the front seat of a motor vehicle commits a crime if the child does not wear a seat belt. Transporting children aged five or younger in the front seat of a motor vehicle,

with or without a seat belt, is an offense. A person also commits an offense if a child under the age of eighteen who is seated in the rear of the vehicle does not wear a seat belt.

“every driver of a motor vehicle which conveys a child shall cause such a child to wear or to be conveyed in an approved Child Restraint System”^{xxviii}

A driver who contrives subsection (1) commits an offence and is liable to summary conviction before a Resident Magistrate to a fine not exceeding 5000\$. From the tone of the provisions, child restraint requirement is mandatory, the violation of which is accompanied by stringent punishment which effectively deter road users from breach.

With regard to children on motor and tri-cycles, the law, once again, is not sufficiently protecting young children. Around 76 per cent of the traffic on Tanzania’s urban roads is composed of ‘*Boda- boda & Bajaji*’, which means that while a significant number of children presumably travel on such vehicles, the law does not take them into account. While helmets are necessary for all vehicles save for Bajaji, the RTA does not have any specifications for child helmets, and thus the provision is not implemented for children.

“when your head hits the pavement, or the ground, your brain is going to move forward hitting up against the bones inside the skull, it’s going to deform. It’s going to stretch nerve fibers. It’s going to tear nerve fibers. And the torn ones are gone. When you lose a brain cell, there’s no replacement for it. So that’s where permanent damage occurs...there’s no cure for brain injury. A brain injury is forever. We can teach someone strategies for dealing with the handicaps, but the only effective approach in dealing with head injury is prevention. Not let the injury occur in the first place, so helmet laws are very necessary”

William D. Singer, M.D. Harvard Medical School.

Reports indicate that motorcyclists are 26% times more likely to die in traffic clash than drivers of passenger cars, so too are passengers on motorcycles *vis a vis* passenger in motor

vehicles.^{xxix} Where the passenger on the motorcycle is a child, the chances of dying during the clash are higher compared to adult passengers. Wearing appropriate helmets improves their chances of survival by 42% and help prevent 69% of injuries to riders.^{xxx}

Our laws allow children of ten years to ride on Bodaboda and Bajaji with no concern for their safety. Our laws does not impose a requirement of children to wear helmets nor are there standard specifications in place for child helmets. Consequently, child fatalities of children on cycles have been the common phenomena. No prescribed protective head gears for children and no seat belts in bajaj- this is a safety dilemma that is considered serious and requires policy and legislative measures.^{xxxi}

HOW TO BREAKTHROUGH?

Unlike other African countries like Egypt, South Africa and Ghana, Tanzania has not ratified any of the international agreement and their respective regulations on road safety. Consequently, it is one of the African countries with worst road safety legal regime especially on aspect of children. It is thus recommended that, Tanzania take initiative to accede to the international agreements with their respective regulations and domesticate them through legislation. UN Regulations 14, 44 and 129 be domesticated and strictly enforced- this will aid to impose obligation to all road users to have child protection devices when dealing with child passengers.

The protection of children can be ensued by incorporation of SUMATRA guidelines on school buses into rules under the Act. limiting the number of school children to be carried in school buses/vans and autorickshaws., by legislating on mandatory child restraint systems and child helmets this will also help to reduce incidents of pupils' fatalities arising from road accidents.

Coordination among the key stakeholders is of paramount importance if at all we're to ensure road safety. Road safety depends on joint efforts of different stakeholders ranging from

executive agencies, legislative organs and judicial organs. Tanzania revenue authority impose meager taxes on devices such as child helmets, child restraint systems, to ensure they're affordable to all classes of road users. Again, the Tanzania bureau of standards (TBS) be strict in ensuring that substandard devices are not allowed in the market. TBS must ensure Child devices' standards comply with the standards under UN regulations 44 and 129. This will help to control counterfeit devices that are not always effective at times of road clashes.

Legal and policy reforms have to be backed-up by the continued awareness campaigns for parents, caretakers, school bus owners and guardians to see the need to always have CRSs in the vehicles.

Awareness raising is of great importance to ensure that road users are aware of how important child protection devices are on commutes *vis-a-a-vis* the pitfalls associated with failure to use them. This will help to change drivers' behavior and mindsets on child protection devices and eventually child fatalities arising from road accidents will decrease systematically.

CONCLUSION

Children belong in the category of vulnerable individuals. This is a sufficient ground that should bring together all stakeholders to ensure that policy, legislative, administrative social and political initiatives are taken with the view of putting to an end fatalities and deadly injuries sustained by child passengers on commute.

REFERENCES

ⁱ LLB, LLM, PhD Candidate at OUT. Director for Tanzania Relief Initiatives, Senior Legal officer at Tumaini University Dar es salaam College, Member of CSO coalition to improve road safety legislation in Tanzania.

ⁱⁱ Recently the President of the United Republic of Tanzania John P. Magufuli impeached the minister for home affairs Hon. Mwigulu Lameck Nchemba for what he says to be failure to take measures to stop the overwhelming road clashes and fatalities.

ⁱⁱⁱ Both the Transport Licensing Act and its respective regulations imposes no requirement of child seats in school buses consequently road safety standards on children are compromise to their detriment.

^{iv} World Health Organization (2013), Strengthening Road Safety Legislation; A practice and resource Manual for countries at P.7

^v Section 26 of Vienna Convention on Law of Treaties, 1969.

^{vi} See Article 63(3)(e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

^{vii} The adoption may take different forms depending on the requirements of the state whether it wants to adopt the whole instrument, part of it or the whole piece with its regulations. These forms are formula, hybrid, subordination and word.

^{viii} Uniform provisions concerning the approval of vehicles with regard to safety-belt anchorages, ISOFIX anchorages systems and ISOFIX top teather anchorages, April 1970

^{ix} Uniform provisions concerning the approval of restraining devices for child occupants of power-driven vehicles (Child restraint systems), Feb 1981

^x UN regulation No. 44 on Uniform Provisions Concerning the approval of restraining devices for child occupants of power-driven vehicles (Child Restraint Systems), 1981

^{xi} Acceding to the Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations, of 1958, Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, of 13 November 1997. See Article 4(3), (4) of the 1997 agreement herein cited.

^{xii} See Article 5 of UN agreement, 1958 cited on footnote 6 read together with Article 4 of the 1997 UN agreement.

^{xiii} Ibid at Article 6, Article. All vehicle parts and systems approved according to UN Regulations under the 1958 Agreement bear the unique E -marking. More than 140 Regulations annexed to the 1958 Agreement Covering all kind of products and their parts

^{xiv} Courtesy from UNECE Presentation 28th November 2017, Geneva, Switzerland

^{xv} A directive to amend Council Directive 91/671/EEC relating to the compulsory use of safety belts and child restraint systems in vehicle

^{xvi} M1 Vehicles are those designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.

^{xvii} N1 Vehicles designed and constructed for the carriage of goods and having a maximum mass not exceeding 3,5 tonnes

^{xviii} N2 Vehicles designed and constructed for the carriage of goods and having a maximum mass exceeding 3,5 tonnes but not exceeding 12 tonnes

^{xix} Vehicles designed and constructed for the carriage of goods and having a maximum mass exceeding 12 tonnes

^{xx} Of the European Parliament and Council of Europe establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.

^{xxi} TR CU 018/2011

^{xxii} Federal Motor Vehicle Safety Standard No. 123 Child Restraint System.

^{xxiii} (number 19,601)

^{xxiv} (number 81/014)

^{xxv} Through Government Gazette [GG], No. 38142 (Oct. 31, 2014).

^{xxvi} For purposes of this law, a child means all persons between the ages of three and fourteen except those taller than one and a half meters

^{xxvii} See section 213 of National Road Traffic Regulations, 2000.

^{xxviii} Section 43C Road Traffic Act, 1938 as amended several times.

^{xxix} https://read.un-ilibrary.org/transportation-and-public-safety/the-united-nations-motorcycle-helmet-study_82cd1e4b-en#page11 accessed on 30th August, 2018 at 01:00 Pm EAT.

^{xxx} *ibid*

^{xxxi} See Regulation 14 of Transport Licencing (Ticycle & Motorcycle regulations) 2010.