

# AN ANALYSIS OF GOOD SAMARITAN LAWS TOWARDS PROTECTION OF THE RIGHT TO LIFE OF POST-CRASH CARE VICTIMS IN MAINLAND TANZANIA: THE CHALLENGES AND PROSPECTS

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## ABSTRACT

Road crashes are an unavoidable phenomenon in Tanzania and the world at large. It affects the life of the victims involved by either causing death or permanent total incapacity. However, we may be able to reduce the fatalities if Tanzania adopts legislation and policies that protect first responders against criminal and civil liability, guarantee access to emergency care services and designate the post-crash care fund for financing compensation arrangements and general emergency needs in the country. This article critically analyzes the Good Samaritan protection provisions and practices in Tanzania as one instrument for the promotion of post-crash care services in Tanzania. Finally, the author proposes several intervention steps to protect the right to life of victims involved in a road crash.

## INTRODUCTION

Tanzania has for a long time witnessed deadly road crashes, including the recent oil tanker crash in Morogoro, due to human-related factors such as drink and driving, over speeding, inability to wear seat belts and protective helmets, and destructed driving. At times road crashes happen due to road environment, latent defects in the vehicles, and other unforeseeable events. Thus, road crashes are inevitable because human beings are susceptible to errors that claim the lives of people. However, there is an increased chance for survival when there are adequate post-crash care systems that seek to offer medical help to victims at the scene of the road crash. 'Injury care is extremely time-sensitive; delays of minutes can make the difference between life and death.'

Generally, effective emergency care begins at the scene of injury. Usually, the lay bystanders who are present or who arrive at the scene play a vital role towards protecting the lives of the victims in the one golden hour, by contacting emergency services, calling for help, securing the scene, organizing people and resources, providing first aid, helping put out the fire and transporting the injured persons to hospitals. These actions have for a long time been part of the traditional social security practices in Tanzania. When done timely and effectively such practices become an essential component of a safe system by reducing deaths and disability from injury.

Looking at the horrible traffic incident in the Morogoro region which has claimed about 97 lives and several injuries,<sup>i</sup> it is no doubt that there are inadequate post-crash care systems in the country. The bystanders opted to collecting valued assets and petrol instead of saving victims' lives leading to massive deaths and injuries. Such culture has developed in the minds of Tanzanians, who for a long time were praised for their kind hearts. Several factors may be associated with the deterioration of the values to help each other in case of a contingent, particularly road crashes. The justification brought forth by social scientists may include increased poverty in the community, urbanization, ignorance, change of economic lifestyle, and egoism. These together have adversely affected our traditional way of thinking which was influenced by the principle of a Good Samaritan and the neighbor principles which appeals to loving your neighbor as oneself. For a long time, assisting the road victims was seen as a positive moral duty that every person owed to the victims. This article critically addresses the

legal protection of first responders to the scene of an accident in Tanzania and the need to adopt Good Samaritan law as one of the post-crash care instruments.

## **THE LEGAL REQUIREMENTS FOR SUPPORT OF POST-CRASH CARE SERVICES IN ANY STATE**

The road traffic deaths arising from crashes at the global level are estimated to be more than 1.25 million people every year, and it is said to be the number one cause of deaths among 15-29 years old people.<sup>ii</sup> This number appears to increase to about 1.35 million people every year in 2016.<sup>iii</sup> It signifies an average rate of 27.5 deaths per 100,000 populations, with more than three times road traffic deaths higher in low-income countries than in high-income countries where the average rate is 8.3 deaths per 100,000 populations.<sup>iv</sup> These statistics require an effective post-crash response which would entail integration of injury care to other related aspects, such as mental health services, road safety data management, and research and data information. The WHO report of 2017 estimated that user-friendliness of organized and integrated prehospital and facility-based emergency care systems can prevent up to 500,000 road traffic fatalities every year. This evidences the fact that with good post-crash care systems, deaths from road crashes can be reduced to a minimum; hence preserve the right to life of every individual citizen in a state.

According to WHO, the effective post-crash response in any country requires legal and policy interventions on the protection of the injured, their families, and by-standers that extend first aid services at the scene. This can be ensured through adopting legal provisions in three key areas. First, a state must adopt enabling provisions that ensure access to emergency care services, ambulance facilities, and rehabilitation centers. This also involves regulation on third party liability insurance and licensing requirements.<sup>v</sup> Secondly, the law must stipulate crash investigation procedures and the need for injury data reporting and data sharing for monitoring purposes. The police investigation report must be comprehensive to cover issues on vehicle and road infrastructure, set a guide on compensation in civil and criminal responsibility.<sup>vi</sup>

Thirdly, the state should provide legal support for the affected persons including victims, survivor's rights and compensation, including protecting victims that sustain disability resulting from the injury. Finally, the law should provide for issues relating to criminal charges,

prosecutions and sentencing of road crash related cases. <sup>vii</sup> Thus, the task of legislating for post-crash care responses needs to address victim protection, exempting bystander or rescuers from civil and criminal liability, eyewitness protection in the criminal justice process, licensing issues of third party insurance companies and subsequent compensation claims. Moreover, this paper ventures to analyze the legal protection of eyewitnesses and first responders of the car crashes in Tanzania Mainland.

## THE EVOLUTION OF GOOD SAMARITAN DOCTRINE IN THE CIVIL AND COMMON LAW SYSTEMS

The Samaritan doctrine is traced way back to the era of Jesus Christ who always insisted on loving the neighbor including enemies, without expectation of any reward. For purposes of clarity, let us look at a parable related in the New Testament, Gospel of Luke, chapter 10, verses 25–37. On one occasion an expert in the law stood up to say to Jesus. Their conversation was as follows:

**E.L.:** *Teacher, what must I do to inherit eternal life?*

**Jesus:** *"What is written in the Law? How do you read it?"*

**E.L.:** *"Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind' and, 'Love your neighbor as yourself."*

**Jesus:** *"You have answered correctly, Do this and you will live."*

**E.L.:** *"and who is my neighbor, teacher?"*

**Jesus:** *"A man was going down from Jerusalem to Jericho, when he fell into the hands of robbers. They stripped him of his clothes, beat him and went away, leaving him half dead with no clothes. - A priest happened to be going down the same road, and when he saw the man, and he passed by on the other side. - So too, a Levite, when he came to the place and saw him, he too passed by on the other side. - But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, took him to an inn and looked after him. The next day he took out two silver*

*coins and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have.' "Which of these three do you think was a neighbor to the man who fell into the hands of robbers?"*

**E.L.:** *"The one who had mercy on him."*

Jesus: *"Go and do likewise"*

The Good Samaritan principle as presented above is now considered as a universal moral concept that seeks to support and encourage people to assist and to rescue the ones who are in need. The principle is also internalized in the Hindu Jurisprudence in what is known as '*Santana Dharma*', i.e., eternal duty, which states that 'if you are living selflessly and performing your actions selflessly, you are a Hindu. If you are living for God, in the service of god and offering your actions, you are Hindu. If you are helping others, you are a Hindu.'<sup>viii</sup> Similarly, the jurisprudence of Muslims about the principle is enshrined in the so-called 'hadith', one of which states that "whosoever removes a worldly grief from a believer, Allah will remove from him one of the grieves of the Day of Judgment. Whosoever alleviates [the lot of] a needy person, Allah will alleviate [his lot] in this world and the next. Whosoever shields a Muslim, Allah will alleviate [his lot] in this world and the next.'<sup>ix</sup>

The Good Samaritan principle was codified during the nineteenth century in the Russian Criminal Code of 1845, the criminal codes of Tuscany (1853), the Netherlands (1881) and Italy, the Zanardelli Code of 1889. After World War II almost every new criminal code contained a failure to-rescue provision.<sup>x</sup> Whereas in the USA, Justice Cardozo in the year 1922 promulgated a principle of duty of rescue in the case of *Glanzer vs. Shephard*<sup>xi</sup> where the Judge reasoned among others as: '...it is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully if he acts at all.' The principle entailed three elements, namely: care should be performed as a result of an emergency; the initial injury should not have been caused by the volunteer, and that the emergency care should not be given negligently or recklessly.<sup>xii</sup>

Later on, the California state enacted the first legislation of 1959 to protect good faith first aid renders from civil liability. By 1964, about 31 states in the USA adopted the Samaritan law to



address the fears of physicians and encourage their involvement at the emergency scene. The Act stated inter alia as:

“No person licensed under this chapter (physicians and podiatrists) who in good faith renders emergency care at the scene of the emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.”<sup>xiii</sup> (Emphasis is mine)

Unlike the USA, the common law did not make a bystander liable to the victims unless there was a particular relationship giving rise to such a duty under the contract, statute, or where there was a fault. The general rule is that one has no duty to aid another in danger since imposing a legal duty would constitute a ‘species of involuntary servitude.’<sup>xiv</sup> Lord Goff in the House of Lords in *Smith vs. Littlewoods Organization Ltd*<sup>xv</sup> held that the common law does not impose liability for what is called pure omissions. There is no general duty of care owed by one person to prevent harm occurring to another, and one cannot be held liable in an English court for failing to do so. Thus, the bystander who decides not to get involved cannot be held liable unless he owes the victim a specific duty to act because of some relationship between them, e.g., parent and child. Once a person is faced with a ‘rescue situation’ and decides to act, he may be found liable if he makes matters worse, i.e., liability for misfeasance.

Under the French law, it was made a crime and civil wrong for a bystander who fails to assist the victim in case of emergency, so long as intervening would not cause any harm to him or third parties.<sup>xvi</sup> Furthermore, the Civil Code of 1804 provided that ‘Whoever voluntarily failed to provide to a person in danger the assistance that, without risk for himself or a third party, he could provide, either by his actions or by initiating a rescue may be punished by up to five years imprisonment and a fine of up to 75.000 Euro’. Under article 1382 of the Civil Code, it is provided that ‘any act which causes harm obliges the one whose fault caused the harm, to make reparation for it.’ This means French law was originally strict to the bystanders who failed to exercise the duty to rescue the victim of a crash. However, the doctrine on the ‘status of necessity’ and ‘implied contract on reciprocal assistance/rescue’ is now used to entitle the rescuer a right to indemnity for any harm caused to the rescuer or third party from which the victim got benefits.

Similarly, in Germany any person is under a duty to provide reasonable and necessary aid to the victims, failure of which is a criminal offence under s.323 of the German Criminal Code, and punishable by one-year imprisonment or fine. Similarly, if a rescuer causes damages to the individual in a hazard or to a third party intentionally, he will be liable in tort unless the conduct was reasonable and there was no gross negligence on part of the rescuer. Belgium also provides for a legal duty to provide rescue to the victim, without danger for himself or others, failure of which is both a crime and civil wrong under article 422bis Criminal Code. The four elements of the crime include the presence of great and actual danger, the knowledge of this great danger, the refusal to render help or to provide help and the lack of danger on the respondent or others. Finland,<sup>xvii</sup> Italy<sup>xviii</sup> and Portugal<sup>xix</sup> also form part of the civil law which protects Good Samaritan by criminalizing failure to attend a victim and providing immunity to the rescuer under tortious or civil lawsuits.

However, criminal liability for non-feasance and liability for negligence appears to be costly and ineffective for two major reasons. First, the altruistic rescue of victims is voluntary and a matter of private conscience. Thus, punishing for non-feasance is one of discouraging one's freedom to conscience. States should apply or attach incentives for Good Samaritan practices to encourage people to assist other people in need. Secondly, the economics of criminal liability requires the state to investigate the alleged offense, prosecute offenders and finally sentence them to jail. These processes would require financial, technical, and human resources to meet the specific standard of proof, which is one beyond reasonable doubt. Some scholars such as Jeremy Bentham and John Stuart Mill, who support laws with some utility in the society, regard punishing rescuers as a way of reducing 'supply of a moral value, altruism.'<sup>xx</sup> There is a minimal gain in criminalizing duty to rescue compared to the total costs involved.

## **THE CURRENT TREND OF GOOD SAMARITAN PROTECTION IN TANZANIA**

The issues surrounding the protection of Samaritans in Tanzania security practice. Members of the community usually participate collectively in addressing unforeseeable natural risks, such as fire, floods, famine, deaths, wars, and so forth. Generally, every member regardless of status or age is required to actively participate in assisting a member who is faced with a calamity or

natural phenomenon according to the principle of communality or solidarity. Even during the time of peace or joy, people still participate in several ways, e.g., payment of bride price, construction of houses in case of earthquake or floods, and so forth. All these affairs are solved on the mutual aid system based on the reciprocity principle, i.e., mutual love and benefaction.

The issues of post-crash care are partly attended to similarly. Members of the place surrounding the scene of the crash and other eyewitnesses usually assist the victims in several ways. They usually report the matter to the nearby police post or respective village and district authorities. At the same time, the first responders would help victims in several ways depending on the nature of the crash and the personal analysis of the first responders. The matter turns sour when first responders innocently cause injury to the victims in the course of saving their lives, for example, losing some limbs, properties and other personal belongings including cash. Society including victims usually casts blames on those who appear first on the scene for loss of properties. Although at times this may appear to be true, it has adversely affected the spirit of first responders.

However, from a legal point of view, the relaxity of the bystanders to support the victims of crashes is associated with a lack of provisions protecting the Good Samaritan. The practice in Tanzania's policing has reduced bystanders to being either offenders or witnesses in the investigation process. Further, the bystanders have at times been required to honor the bills arising out of their good intention to help victims. Consequently, bystanders and passers-by choose to remain spectators for fear of being engaged in a prolonged legal procedure, e.g., police investigation, attending court trials as a witness or being personally sued for civil damages.

According to the *WHO Emergency Care System Framework*, the bystander usually initiates the rescue process by reporting to the provider who then gives instructions on how to attend to the victim, including the positioning of victims and intervention steps.<sup>xxi</sup> This means relaxity on the side of the bystander would adversely affect the life of the victim in a golden hour by arriving late at the scene. It should be noted that transporting the patient to the health facility depends upon timely information from the first responders. This means that the legal system in any country should see to it that first responders, who appear to be good Samaritans, should be effectively protected by law. This would encourage voluntary participation by members of the local community.



The Road Traffic Act,<sup>xxiii</sup> which is the framework law governing road safety issues in Tanzania, provides for general offences and administrative matters. Part V of the Road Traffic Act provides for control of traffic including proper use of roads, road signs, and control of road user behavior (particularly drivers) so that passengers reach their destination safely. The conventional behaviors controlled include speed management (avoid speeding in built-up areas, highway, and residential areas)<sup>xxiii</sup>, drink and driving,<sup>xxiv</sup> wearing of protective helmet by driver and passengers;<sup>xxv</sup> seat-belt wearing,<sup>xxvi</sup> and use of child restraint systems.<sup>xxvii</sup> However, the Act does not address issues of child restraint and distracted driving, which is also a cause of accidents in the world today.

S. 96 of the Road Traffic Act establishes the National Road Safety Council which consist of the Chairman, a Vice-Chairman and not less than ten (10) other members appointed by the Minister for Home Affairs.<sup>xxviii</sup> Its functions are listed down under section 97 of the RTA to include: first, providing an effective central organization, intensify road safety activities and exploit fully and continuously available knowledge and experience in all matters connected with road safety. Secondly, promote research into causes of road crashes, suggest countermeasures to combat accidental problems and carry out statistical research as to the number, types and cost of traffic crashes.

The Council is further mandated to identify local accident hazards, devise and suggest remedies and advise the authorities concerned to promote action. Fourthly, make proposals for amending traffic and road safety legislation to reduce road traffic crashes. The fifth role is to encourage and provide training and education for road users, increase road users' knowledge of particular hazards, and induce a more positive attitude to road safety through lectures, demonstrations, campaigns or any other means. Furthermore, the Council is responsible to collect, prepare and disseminate educational material on road safety; also prepare and promulgate integrated programs of public information through appropriate media of mass communication.<sup>xxix</sup>

Conversely, the Police Force and Auxiliary Services Act (hereinafter referred to as PFASA)<sup>xxx</sup> establishes the Traffic Department with powers to direct and control traffic in Tanzania. Under section 40 (1)<sup>xxxi</sup>, the traffic Police department is mandated to control traffic and divert all or any particular kind of traffic in the public interest, and to close any street for preventing the interruption of any public proceedings by the noise or presence of street traffic. Furthermore, it is obliged to keep order and prevent obstruction on public roads, streets, thoroughfares, landing places, or other places of public resort or to which the public have access.<sup>xxxii</sup> The

Traffic Department also keeps records of all traffic offences and a record of the final disposition of alleged offence,<sup>xxxiii</sup> and general enforcement powers of the traffic laws.

Moreover, neither the RTA nor the PFASA prescribes post-crash care management as part of the NRSC's or the Police's roles. Although the NRSC is assumed to be a lead agency, with the Traffic Department as secretariat, they have not been directly associated with post-crash care services, except on reporting of the incidences and facilitation of transportation of victims to the hospitals. This is done in collaboration with the Emergency Care Unit in the Ministry of Health. Similarly, the RTA does not contain any single provision on first responder's rights, except provisions that regulate speeding for emergency vehicles. Similarly, the Penal Code does not address the issue of duty to care for the road victims and protection of Good Samaritans. There is a need to enact a specific law providing for duty to care for the victims of a road crash or other crimes, a procedure to be involved, and protection of the rights of Good Samaritans.

## **THE MINIMUM STANDARDS AND BEST PRACTICES ON FIRST RESPONDER'S PROTECTION**

As a matter of international standards, each member state is required to prescribe a law that protects such person who renders emergency care, advice, or assistance to a person in danger, in good faith and gratuitously, to the extent that he does not pose risk to himself or third parties. This means that first responders would have a duty to rescue the victim as long as he or she does not endanger his own life or the life of the third parties. Similarly, a law should provide liability immunity cover to the person who voluntarily carries rescue operations in case of any subsequent loss not occasioned by gross negligence or recklessness. This tries to exonerate altruistic rescuers from being sued for damages by the victims in case of any loss or danger to the victim. Moreover, the law needs to provide compensation in case a rescuer sustains an injury, either from a person causing danger, the victim, or the state.<sup>xxxiv</sup>

The above two legal requirements need to be contained in a law that seeks to protect good Samaritans regardless of the approach taken, be it civil, criminal, or both. For example, in the public interest litigation case of *Save Life Foundation & Another vs. Union of India & Another*,<sup>xxxv</sup> the Supreme Court of India interpreted the guidelines (Good Samaritan Guidelines)<sup>xxxvi</sup> issued by the Ministry of Transport on the protection of good Samaritan pending the passing of the Good Samaritan (Protection from Civil and Criminal Liabilities)

and Miscellaneous Bill, 2014.<sup>xxxvii</sup> The guidelines provided that the hospitals, police, and all other authorities should not hold any rescuer liable for any civil and criminal wrongs. They were also required to provide compensation or reward complemented by an acknowledgment in a manner specified by the state.<sup>xxxviii</sup> For this purpose, India established a Fund known as the Good Samaritan Fund, for reimbursement of charges or expenses incurred by the hospital or rescuer.

Previously, the Indian court had stipulated guidelines for the treatment of a road accident victim in the case of *Parmanand Katara vs. Union of India*<sup>xxxix</sup> whereby it was held that protection of the life of the victim should be of paramount importance not only for the police or the doctor but also for any other citizen who is a witness to the accident. The court observed further that irrespective of place of employment, every medical practitioner must extend his or her expertise for the protection of life in emergencies. The *bona fide* aid extended to any person should serve as a reason for unnecessary harassment by the police/lawyers or judges. Similarly, in *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal*,<sup>xl</sup> it was held that the constitution at the federal level, as well as state level, guarantees a welfare state under which the primary duty of the government is to serve the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the government in a welfare State

Furthermore, India adopted the standard operating procedure for purpose of stipulating steps to be taken by the police during an examination of Good Samaritan. Under the Standard Operating Procedure, a Good Samaritan enjoys certain rights and obligations, to wit:

- (i) *The right to withhold personal information:* A person except for an eye witness, who makes a phone call to the Police Station informing them about any accidental injury or death, has the right not to reveal personal details such as full name, address, phone number, and so forth. Further, upon arrival at the scene, the police officer shall not compel the Good Samaritan to disclose their particulars. Additionally, the good Samaritans have the right to leave the hospital after they handled the victim to the nearest hospital, without being questioned or otherwise being required to disclose personal information.<sup>xli</sup>
- (ii) *The right to decide whether or not to be a witness:* Where one chooses to be a witness, he shall be examined with utmost care and respect and without any discrimination on the grounds of gender, religion, nationality, caste, or any other grounds. Similarly, his

examination by the investigating officer must be conducted at a time and place of his convenience, e.g., his place of residence or business, and the investigation officer shall be dressed in plain clothes, unless the Good Samaritan chooses to visit the police station, or otherwise is required to report at the station, in which reasons shall be recorded in writing.<sup>xlii</sup>

- (iii) *The right to fair examination proceedings:* Upon arrival at the police station, the Good Samaritan shall be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay, and in a language understood by him or her, subject to assistance by an interpreter.<sup>xliii</sup>
- (iv) *The right of the eyewitness to prove the matter by affidavit:* Where a Good Samaritan declares to be an eyewitness, he shall be allowed to give his evidence on affidavit, under section 296 of the Code of Criminal Procedure, 1973 (as amended in 1974). The Police officers must record a complete statement or affidavit of a Good Samaritan in a single examination.<sup>xliv</sup>

On the other hand, the practice from the USA<sup>xlv</sup> in about 37 out of 51 states shows that a Good Samaritan Statute is characterized by five important things.<sup>xlvi</sup> First, it must enumerate the class or classes of persons who are entitled to Samaritan immunity. The law may cover any person or define specific groups of medical professionals such as physicians, dentists, nurses, medical technicians, ambulance attendants, policemen, school personnel, and any other person deemed to be essential for the provision of post-crash care at a particular scene. The law must define beneficiary of the Good Samaritan protection as medical practitioners are presumed to operate under a different standard of care, the breach of which may amount to professional negligence or misconduct.

Secondly, the law should stipulate the required state of mind on the part of the rescuers procuring emergency care, i.e., good faith and emergency requirements. This means that rescuers would be protected even in case of damage resulting from their service as long as it was procured to save the victim from imminent danger. Along with this requirement, the law should also define what amounts to ‘emergency’ and ‘good faith’ for purposes of protection of rescuers. In the American case of *Gragg vs. Neurological Associates*,<sup>xlvii</sup> a doctor performed an angiogram on a patient (plaintiff) resulting in total permanent paralysis. The defendant’s



corporation sought protection under the Georgia Good Samaritan statute, but the court ruled that the angiogram was not performed as a result of an accident or emergency.

Thirdly, the law should require that rescuers provide emergency care gratuitously, i.e., without expectation of remuneration. This is the sacrifice part of the principle of Good Samaritan. However, in some other jurisdictions, medical practitioners may be allowed to recover a fee for the medical assistance given to the victim. This is known as quasi-contract recovery in the USA in which doctors are legally allowed to claim compensation for the treatment extended to the patient.<sup>xlviii</sup> However, under s.519 (c) Vermont's Duty to Aid the Endangered Act, 1973 restricts protection to a rescuer who receives remuneration as a reward for attending the victim.<sup>xlix</sup>

Fourth, a Good Samaritan Statute should specify places in which emergency aid must be given for the immunity to attach, i.e., at the scene. Finally, the law should define a minimum acceptable standard of conduct other than that of a common and reasonable rescuer. This means that rescuers are expected to be behaving in a way that does not jeopardize the life of the victim. The state may set the standard of care by using such legal phrases as 'negligent, wanton, reckless, gross, willful or intentional'.<sup>1</sup> These terms are used to signify the expected knowledge and skills a reasonable and prudent person is expected to exhibit in the course of attending a victim.

It is also important for the state to impose a mandatory affirmative duty on the bystander to rescue a person in danger when doing so would not cause harm to the rescuer, failure of which may result in criminal penalties and civil liabilities. A good example is Vermont's Duty to Aid the Endangered Act, whereby under para (a) it is stated as:

A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to him or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.<sup>li</sup>

Nevertheless, some states have made it an offence for failure to help the victims at the scene. For example, the Guangdong Province in China under the Good Samaritan's Right Protection Regulation of the Sherizhen Special Economic Zone of July 22, 2013, does protect rescuers from liability and imposes the burden of proof to the injured person in case of any resulting



litigation. Further, it exempts rescuers from liability for unintentional injury or death except in the case of gross negligence. It also sanctions the conduct of the person who has received aid from making false claims against rescuers, and it awards any effective eyewitness of Good Samaritan. Hence, Tanzania may adopt provisions of the law which seek to entrench minimum protections of Good Samaritan in all cycles including limiting the liabilities for injuries, non-prosecution and consented participation in the investigation proceedings, and compensation for services rendered to the victim (where appropriate).

## **RECOMMENDATIONS FOR EFFECTIVE PROTECTION OF THE GOOD SAMARITAN IN MAINLAND TANZANIA**

It is high time that the government of Tanzania amends the Road Traffic Act to protect bystanders from liability. This would encourage the spirit of people towards saving the lives of the people, instead of blaming them for any loss occasioned by their innocent acts or omissions. Tanzania and other East African states should enact laws that are not punitive, except in situations of gross negligence. The world today is shifting its focus from blaming road users to the total integration of road safety through what is known as a safe system approach, whereby every person has a responsibility to reduce road fatalities.

Generally, the Safe System approach aims for a more forgiving road system that takes human fallibility and vulnerability into account. Under a Safe System, the transport system is designed to protect people from death and serious injury. It takes into account the fact that people make mistakes, and that people's bodies are vulnerable to road crashes; hence road designers and road users have shared responsibility towards reducing road fatalities.<sup>lii</sup> Thus, states need to improve the safety of all parts of the system, i.e., safe roads and roadsides, safe speeds, safe vehicles, and safe road users.

Secondly, there is a need to adopt the national road safety plan and targets which should define mechanisms for promoting road safety agenda in the development processes, define the roles of stakeholders in the private and public sectors, and devise policy instruments for the protection of good Samaritans. It may be stressed that the issue of road safety in Tanzania has not been given much weight it deserves even though deaths and injuries arising from crashes in Tanzania are increasing. In 2013 for example, the report on road traffic matters issued by

the Deputy Commissioner of Police, Inspector Mpinga, indicated that 23,842 road crashes led to 4,002 deaths. This represented an economic loss of Tshs. 2,400-2,500 billion (1.2-1.5 million USD) per year.<sup>liii</sup> This is equal to the GDP of 3.4 %, while in years 2014 and 2015, the GDP loss due to road crashes was 3.1% and 2.8% respectively.<sup>liv</sup>

Moreover, a total of 3,574 deaths occurred in 2015 compared to 3,857 deaths that occurred in 2014.<sup>lv</sup> Nevertheless, the road crashes seem to have increased in the year 2016 as Tanzania is said to have reported 3256 deaths from road crashes.<sup>lvi</sup> These figures are still high compared to other East African states, e.g., Kenya recorded 2965 road deaths while Uganda recorded 3503 road deaths in the year 2016.<sup>lvii</sup> It needs to be restated that there is a need to take serious legal and policy reforms to save people's lives in Tanzania in all aspects of road safety. Tanzania needs to domesticate the safe system approach which has been successful in reducing road fatalities in some other states. An example of states that have successfully adopted the safe system approach in their policies and plans include Australia through the *National Road Safety Strategy 2011-2020* which accommodates *Decade of Action 2011-2020*; Sweden through *Vision Zero* based on a *Safe System Approach*; Nigeria through *National Road Safety Strategy 2014-2018*; Ghana through the *National Road Safety Strategy III, 2011-2020*. Other states include *New Zealand* through the *Safer Journeys Strategy 2010-2020 and Safer Journeys Action Plan 2016-2020*.

Furthermore, Tanzania is a member of the African Union needs to sign and ratify the African Road Safety Charter<sup>lviii</sup> which lays down the policy framework and advocacy tools for road safety improvement in the Continent. The Charter was adopted to respect the AU and UN Declarations on road safety, particularly: the UN General Assembly Res.64/255 of 2 March 2010 on 2011-2020 Decade of Action for Road Safety; Luanda Declaration AU/TPT/MIN/Decl. (II) and African Action Plan for the Road Safety Decade 2011-2020, adopted by the Second Ordinary Session of the Conference of African Ministers responsible for Transport in 2011.

The Charter recognizes the demand for the involvement of the private sector (including civil society organizations and NGOs) participation in road safety issues and promotes harmonization of collection, treatment, and dissemination of road safety data.<sup>lix</sup> The road safety lead agency must be the custodian of the road safety data management systems.<sup>lx</sup> This depends

on the existing or created national databases on-road crashes and mandatory reporting mechanisms on road safety matters, and the monitoring and evaluation tools.<sup>lxi</sup> The Charter further appreciates the financial implication of road safety measures and it requires states to allocate a specific proportion of resources and identify sustainable sources of funding internally.<sup>lxii</sup>

As part of a safe system approach, the Charter obligates state parties to strengthen pre-hospital and post-crash care services for road crash victims, including establishing Emergency Medical Care (EMC) Coordinating Centers; 3<sup>rd</sup> party motor vehicle insurance cover; and facilitation of training in injury emergency response.<sup>lxiii</sup> The latter should also include enacting laws for protecting first responders from liability and laying down duty on every person to rescue the victims. Similarly, there is a need to promote public awareness on post-crash emergency care to prevent members of the public from acts that may accelerate deaths. We need to devise post-crash care systems that would take into account the nature of the Tanzanian population.

Thirdly, there is a need to set a road safety fund through which emergency care services and other road safety related matters will be financed. Currently, emergency care services are catered for under the ministry of health through the budget is inadequate and the pre-hospital centers are almost non-existent. The sources of the fund would depend on the government budget, investments, taxes, and dues upon registration of vehicles and licensing processes, and upon road use. There is no international best practice when it comes to funding road safety. The range of funding sources includes General tax revenues; Specific taxes (often traffic fines) earmarked to support road safety; Levies on motor vehicle insurance premiums; Road funds, fed from user fees (usually fuel levies); Levies on vehicle and driver fees; Percentage of maintenance budget and Private sector sponsorship.<sup>lxiv</sup> All these avenues may be considered when considering possible options depending on the government finance plan.

## CONCLUSION

Road fatalities can be reduced at a zero rate if the government amends the existing traffic laws and designates the lead national post-crash care agency. The WHO commends member states to ensure access to emergency care, establish a basic package of emergency care services at all levels of the health system, and promote community first responder training. With trained lay

bystanders and traffic officers, Tanzania will be able to save lives of many road traffic victims. Saving the lives of the victims of road crashes should be a shared responsibility of the public and private sectors. Thus, it is recommended that the government amends the existing traffic laws to protect first responders from being sued for criminal and civil wrongs, and providing access to emergency care facilities. There is a need to create awareness among all sections of society to treat accident victims with care and without fear so that morbidity and mortality can be reduced.

## ENDNOTES

<sup>i</sup> Available at <https://www.thecitizen.co.tz/news/1840340-5241012-9ama8j/index.html>, retrieved on 19<sup>th</sup> August 2019 at 7.46 pm.

<sup>ii</sup> WHO; *POST CRASH RESPONSE: Supporting those affected by road traffic crashes, Switzerland*, 2016, at p.2

<sup>iii</sup> WHO; *Global Status Report on Road Safety 2018: Summary*, Geneva (WHO/NMH/NVI/18.20). Licence: CC BY-NC-SA 3.0 IGO), p.1

<sup>iv</sup> *Ibid.*, p.3

<sup>v</sup> WHO; *Post Crash Response: Supporting those affected by road traffic crashes, Switzerland*, 2016, at p.17

<sup>vi</sup> *Ibid.*, pp.17-18

<sup>vii</sup> *Ibid.*, p.17

<sup>viii</sup> Vishesh Kumar & Venkantraman, B., *Good Samaritan Laws-Requirement and Analysis*, *The World Journal on Juristic Polity*, ISSN 2394-5044, May 2017, at p.2

<sup>ix</sup> *Ibid.*,

<sup>x</sup> Vishesh Kumar & Venkantraman, B., *Good Samaritan Laws-Requirement and Analysis*, *The World Journal on Juristic Polity*, ISSN 2394-5044, May 2017, at p.2

<sup>xi</sup> *Glanzer vs. Shepard*, 233 N.Y. 236, 135 N.E. 275 (N.Y. 1922) accessed at <https://www.casemine.com/judgement/us/5914a862add7b049346fc5e4>, on 15<sup>th</sup> August 2019 at 8.30 pm.

<sup>xii</sup> *Ibid.*

<sup>xiii</sup> Vishesh Kumar & Venkantraman, B., *Good Samaritan Laws-Requirement and Analysis*, *The World Journal on Juristic Polity*, ISSN 2394-5044, May 2017, at p.3

<sup>xiv</sup> Scheid John H; *Affirmative Duty to Act in Emergency Situations –The Return of the Good Samaritan*, 3J, *Marshall Journal of Pract. & Proc.* 1, Volume 3:1 of 1969, at p.4

<sup>xv</sup> (1987) 2 AC 241

<sup>xvi</sup> Article 223-6 of the Criminal Code

<sup>xvii</sup> S.2, article 1 of the Finnish Act of Non-contractual Damages (*Vahingonkorvauslaki*) and s.3, article 6 and 7 of the Finnish Criminal Code (*Rikoslaki*) and s.21, article 14 of the same provide liability for deliberate and negligent conduct on the rescuer causing injury to the victim, and the breach of the duty to rescue punishable by a fine or imprisonment for maximum two years in prison.

<sup>xviii</sup> Refer to article 593 of the Criminal Code which criminalizes failure to provide emergency assistance to the victims. Art. 189 of the leg. Decree No. 285 from 03/04/92-Highway Code punishes any person who breaches the obligation of providing necessary assistance to injured persons by sentencing him from one to three years imprisonment, and the suspension of driver's license for a period of no less than a year and six months and no more than five years.

<sup>xix</sup> Article 200 (1) of the Criminal Code makes it an offence for a bystander who fails to provide assistance to the victim and such person shall be punished by up to 1 year imprisonment or fine of up to 120 days. Furthermore, article 200 (2) of the Criminal Code increases the penal sanction twice for anyone who intentionally fails to



provide assistance or rescue. Similarly, article 483 of the Portuguese Civil Code recognizes the general principle of civil liability in the sense that whoever harms anyone's rights has the obligation to repair the damages caused.

<sup>xx</sup> Melkevick, A., *Against Samaritan Laws: The Good, the Bad and the Ugly*, Harvard University, p.21

<sup>xxi</sup> WHO; *Save LIVES –A Road Safety technical Package*, 2014, at p.36

<sup>xxii</sup> Cap 168 R.E 2010

<sup>xxiii</sup> Refer to ss.51-54; ss.39(15) and 65(13); s. 114 of the RTA

<sup>xxiv</sup> Ss.40(2), 44, 45 and 46 of the RTA

<sup>xxv</sup> S.39(12) of the RTA read together with the Tanzania Standard (Protective Helmets for motor cycle riders) Specification, TZS 1478:2013

<sup>xxvi</sup> S.39(11) of the RTA

<sup>xxvii</sup> There is no any provision on child restraint in the RTA.

<sup>xxviii</sup> The Minister has discretionary powers to constitute the Council, the fact which affects the smooth operation of and autonomy the Council.

<sup>xxix</sup> Section 97(a-i) of the RTA

<sup>xxx</sup> Cap 322 R.E 2002

<sup>xxxi</sup> *Ibid.*,

<sup>xxxii</sup> Similar powers are provided under section 73(1) of the RTA, Cap 168

<sup>xxxiii</sup> *Ibid.*, section 74

<sup>xxxiv</sup> Scheid John H; *Affirmative Duty to Act in Emergency Situations –The Return of the Good Samaritan*, 3J, Marshall Journal of Pract. & Proc. 1, Volume 3:1 of 1969, at p.15

<sup>xxxv</sup> Writ Petition (Civil) No. 235 of 2012

<sup>xxxvi</sup> These are referred as Ministry of Road Transport and Highways Notification, No. 25035/10112014-RS, of 12<sup>th</sup> May 2015, issued by the Central Government of India.

<sup>xxxvii</sup> The Bill is pending before the Parliament even though there was a special mention of it in the Rajya Sabha on 3rd May, 2016 ( refer to Vishesh Kumar & Venkantraman, B., *Good Samaritan Laws-Requirement and Analysis*, The World Journal on Juristic Polity, ISSN 2394-5044, May 2017, at p.9)

<sup>xxxviii</sup> <http://www.legalserviceindia.com/legal/article-339-model-good-samaritan-law.html> retrieved on 15th August 2019 at 3.47 pm.

<sup>xxxix</sup> (1989) AIR 2039

<sup>xl</sup> (1996) SCC (4) 37

<sup>xli</sup> Sapna, Sukrut Deo (Dr.); *Protection of Good Samaritans: A Study in the light of the Supreme Court's decision in Save Life Foundation case*; International Journal of Law, Vol.2 Issue 6, November 2016, at p.12-13

<sup>xlii</sup> *Ibid.*, p.13

<sup>xliii</sup> *Ibid.*,

<sup>xliv</sup> *Ibid.*,

<sup>xlv</sup> Each state in USA has its own Good Samaritan statute.

<sup>xlvi</sup> Brandt, Eric A (2015); *Good Samaritan Law: The Legal Placebo: A Current Analysis*, Akron Law Review, Volume 17:2, July 2015 at pp.308-309

(<https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1843&context=akronlawreview>, accessed on 16<sup>th</sup> August 2019 at 12:53 pm.

<sup>xlvii</sup> *Gragg vs. Neurological Associates*, 152 Ga. App. 586, 263 S.E.2d 496 (1979), and the accompanying case, *Gragg v. Spenser*, 159 Ga. App. 525, 284 S.E.2d 40 (1981)

<sup>xlviii</sup> Brandt, Eric A (2015); *Good Samaritan Law: The Legal Placebo: A Current Analysis*, Akron Law Review, Volume 17:2, July 2015 at p.319

<sup>xlix</sup> Accessed at : <https://h2o.law.harvard.edu/collages/19225> , on 16 August 2019 at 12:01 pm.

<sup>l</sup> Brandt, Eric A (2015); *Good Samaritan Law: The Legal Placebo: A Current Analysis*, Akron Law Review, Volume 17:2, July 2015 ,p.320

<sup>li</sup> S.519 (a) of Vermont's Duty to Aid the Endangered Act, 1973; accessed at <https://h2o.law.harvard.edu/collages/19225>, on 16<sup>th</sup> August 2019

<sup>lii</sup> Available at <https://www.saferjourneys.govt.nz/about-safer-journeys/the-safe-system-approach/> retrieved on 20<sup>th</sup> August 2019

<sup>liii</sup> SUMATRA; *Improvement of Road Safety in Tanzania Mainland*, Final Report, June 2017, at p.14

<sup>liv</sup> SUMATRA; *Improvement of Road Safety in Tanzania Mainland*, Final Report, June 2017, at p.16

<sup>lv</sup> United Republic of Tanzania, *Crime and Traffic Incidents Statistics Report* , January-December 2015, at p.36

<sup>lvi</sup> WHO, *Global Status Report on Road Safety*, 2018 at p.260

<sup>lvii</sup> WHO, *Global Status Report on Road Safety*, 2018, at pp.173 and 254, respectively

<sup>lviii</sup> This was adopted during the 26th Ordinary Session of the Assembly held in Addis Ababa, Ethiopia on 30th January 2016. Only four states have signed, namely: Comoros (29<sup>th</sup> January 2018), Ghana (04<sup>th</sup> July 2017), Sierra



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Leone (14<sup>th</sup> July 2016) and Zambia (17<sup>th</sup> July 2016). None of the 55 member states have ratified, hence the Charter is not yet in force since the requirement for entry in-force is ratification by 15 member states. (Refer to [https://au.int/sites/default/files/treaties/32541-sl-road\\_safety\\_charter.pdf](https://au.int/sites/default/files/treaties/32541-sl-road_safety_charter.pdf) , retrieved on 31 January 2019 at 2.00 pm.

<sup>lix</sup> Refer to article 2(2) (e-f) of the African Road Safety Charter.

<sup>lx</sup> Refer to articles 7 and 8 of the African Road Safety Charter.

<sup>lxi</sup> Refer to article 20 of the African Road Safety Charter.

<sup>lxii</sup> Refer to article 18 of the African Road Safety Charter

<sup>lxiii</sup> Refer to article 17, *ibid*

<sup>lxiv</sup> SUMATRA, Improvement of Road Safety in Mainland Tanzania, 2017; p.60

