

SCHOOL  
OBLIG ESS  
1994/95

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

OBLIGATORY ESSAY (L411)

THE ADMINISTRATION AND ENFORCEMENT OF ROAD

SAFETY LAWS IN ZAMBIA

BY

KASUMPA MWANSA

Being a final year dissertation submitted to the University of Zambia, Faculty of Law in partial fulfillment to the conditions for the award of the Bachelor of Laws (LLB) degree.

SUPERVISOR: MR. MICHAEL MUSONDA.

UNIVERSITY OF ZAMBIA

DATE:

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the obligatory essay prepared under my  
supervision by

KASUMPA MWANSA

entitled

" THE ADMINISTRATION AND ENFORCEMENT OF  
ROAD SAFETY LAWS IN ZAMBIA."

be accepted for examination. I have checked it  
carefully and I am satisfied that it fulfils the  
requirements relating to the format as laid down  
in the regulations governing obligatory essays.

Date: 09.10.95

Supervisor: 

Mr. M. Musonda

# DEDICATION

To Simon Mwelwa Chimbaza and Omega S. Mwansa  
for urging me to carry on. You certainly eased the  
pain of learning.

## ACKNOWLEDGEMENTS

To write a paper of this kind is not easy, that is why upon its completion it can not go unacknowledged. In carrying out this work, I benefited greatly from Mr. Michael Musonda. His professional guidance was made easier by the genuine interest he takes in his students. I am truly indebted to him.

I extend my precaution to Mr. London Ngoma, the Director at the Road Traffic Board, Mr. Chipuwa and Mr Timothy Katanekwa, Deputy registrar at the high court for supplying me with the information I needed to successfully carry out this research.

The assistance of Ms E.W. Siwamezi can't go un acknowledged being the person who tirelessly typed my work. Secondly - being the personal secretary of the Chief Personnel Officer, who is none other than my mother whom I acknowledge. I also acknowledge the assistance and encouragement I got from my father Mr. D. K. Mwansa.

CONTENTS.	page
RECOMMENDATION.....	1
Title.....	2
Dedication.....	3
Acknowledgement.....	4
Contents.....	5
Introduction.....	7
End Notes.....	11
1. CHAPTER ONE	
1.1 Definition of Road Safety.....	12
1.2 Traffic Environment.....	13
1.3 The Rationale and importance of Road Safety.....	15
1.4 Evolution of the notion of Road safety.....	16
1.5 End notes.....	19
2. CHAPTER TWO: THE INSTITUTIONAL FRAMEWORK OF ROAD SAFETY AND WEAKNESSES OF THE EXISTING FRAMEWORK.	
2.1 Background.....	20
2.2 Institutional framework of Road safety in Zambia.....	21
2.3 Weaknesses of the existing Framework	

in Zambia.....	25
2.4 End Notes.....	29
3. CHAPTER THREE: AN EXAMINATION OF PART XII OF THE ROAD AND ROAD TRAFFIC ACT.	
3.1 Part XIII of the act.....	31
3.2 Overspeeding.....	31
3.3 Racing.....	33
3.4 Careless driving.....	34
3.5 Reckless driving.....	35
3.6 Driving under the influence of drinks or drugs.....	36
3.7 End Notes.....	38
4 CHAPTER FOUR: JUDICIAL ATTITUDE TOWARDS ROAD SAFETY.	
4.1 Judicial attitude towards overspeeding, section 192.....	40
4.2 Judicial attitude towards section 193.....	43
4.3 Judicial attitude towards section 194.....	43
4.4 Judicial attitude towards section 195.....	44
4.5 Judicial attitude towards section 196.....	47
4.6 Judicial attitude towards section 197.....	49
4.7 End Notes.....	52
5 CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS	
5.1 Conclusion.....	53
5.2 Recommendations.....	55
Bibliography.....	60

## INTRODUCTION

Zambia has one of the highest population growth rates in the world. This has been put at 31.1% per year.<sup>1</sup> A high population places a heavy strain on the transport sector which has to respond by expanding in order to accommodate the increased demands on it.

As the transport sector grows to meet these growing demands, the number of motor vehicles on the road also increases. A point worth noting here is that even if the population and number of motor vehicles are increasing the size and number of roads remain the same. As more and more vehicles go on the roads the number of traffic accidents are bound to rise.

Below is a table showing the trend of Road Traffic Accidents over a five year period in Zambia.<sup>2</sup>

Year	Number of Road Traffic Accidents	Percentage Increase or Reduction	Deaths Recorded
1989	6,999	63%	559
1990	9,769	36%	964
1991	10,399	67%	873
1992	12,085	58%	887
1993	11,223	8%	884

NOTE:

These tables are accurate in so far as recorded accidents are concerned. Some accidents are not recorded. For instance these occurring in rural or residential area may not be reported and therefore not reflected in such tables.

Although the table show a reduction in the number of reported accidents, there is still a likelihood that they might rise in number. This may be so if measures are not taken to reduce the number of road accidents. As early as 1982, 5,410 accidents were recorded. There was a slight decrease in the following years but in 1989 the number or road accidents reported rose to 6,999 **3**



The road traffic accident problem is a universal one and affects every country in the world. According to a World Bank report as quoted by Kaziya, "Road accidents constitute a serious growing problem in many third world and developing countries". It was further observed by the same report that by the year 2000 road accident fatalities in developing countries will be at 50% to 100% higher than at present<sup>5</sup>

In Zambia this problem has been present since the pre-Independence days. However the accident rate was not as high as it is now. For instance in 1964 3,800 road traffic accidents were reported out of which 380 deaths were recorded.<sup>6</sup> The latest figures at the Road Traffic Board show that in 1993 11,223 accidents were reported out of which 884 deaths occur.<sup>7</sup> It is our humble view that the difference ~~in the difference~~ in the number of deaths and road accidents is attributed to the fact that the population of human beings and motor vehicles in 1964 were not as high as they are today (1995)

Since it would be very expensive and almost impossible venture to increase the size and number of roads constantly to meet the growing demands another method could be cultivated in order to reduce the number of accidents. We submit that if the law relating to Roads and Road Traffic were enforced the problem of road accidents would reduce considerably.

This paper centres on Road Safety in Zambia. It seeks to provoke public awareness and the need to keep our road safe. The Act which embodies the Road Safety law is the Road and Road Traffic Act which is Chapter 766 of the Laws of Zambia. This Act is quite a voluminous piece of legislation and we do not propose

to discuss all the provisions of this Act. In this paper therefore, we propose to focus on part XIII of the Act which creates a number of road traffic offences and also prescribes appropriate punishment for the offences. (We propose to arrange the paper on the in the following manner;)

Chapter one gives the various definitions of Road Safety and states which definition we shall adopt for the purpose of our essay. It also defines the traffic environment and gives the rationale for road safety. Lastly, it gives an account of how Road Safety in Zambia evolved to date (1995).

In chapter two we shall describe the ~~Inter~~<sup>Institutional</sup> national framework of Road safety in Zambia. Specifically we shall discuss the Ministry of health, Ministry of Home Affairs, Ministry of Transport and Communication and Ministry of Works. We shall further discuss the weaknesses of the framework.

In chapter three we shall discuss the provisions of part XIII of the Act. We shall state the law and analyse to what extent the laws are enforced. We shall then state to the effect of these provision on Road Safety.

In the fourth chapter we shall attempt to analyse the Judicial attitude towards Road Safety. A comparison shall also be made with the Judicial attitude towards Road Safety in England. We shall make use of at least five decided cases in our analysis.

The fifth chapter shall constitute the conclusion and Recommendations based on what was discussed in the paper. We shall then recommend ways in which road safety may be enforced.

### END NOTES

1. Henry B. Kaziya Dissertation in partial fulfilment for the award of a Diploma in Business Management dated April, 1994. Lusaka page 2.
2. Statistics obtained from the Roads and Roads Traffic Board, 1993 Publication, Lusaka.
3. IBID Page 1
4. Henry B. Kaziya, Dissertation in partial fulfilment for the award of a Diploma in Business Management. April, 1994 Lusaka at page 2.
5. IBID
6. Statistics obtained from the Road and Road Traffic Board, 1993 Publication, Lusaka.
7. Demography Report obtained from the Central Statistics Office, 1995, Lusaka.

## CHAPTER ONE

### 1.1 DEFINITION OF ROAD SAFETY

For the purpose of defining Road safety we shall split the phrase (Road Safety) into two facets namely; "Road" and "Safety".

The word "Road" has been defined in many ways. The Roads and Road Traffic Act of England enacted in 1958 defines a "Road" in section 149 as a highway or any other road to which the public has access and includes bridges over which a road passes.<sup>1</sup>

This definition has presented difficulties to courts in certain instances. In the case of Thomas and Dando <sup>2</sup> for example it was held that even a place which is not necessarily a road and separated by a wall from the highway may be treated as a road for the purpose of the England Act.

In the case of Baxter v Middlesex country Council <sup>3</sup> it was held that the whole space between the fences and a grass verge between the pavement and the fence was to be treated as being part of the road.

The definitions and cases advanced above were mentioned to broaden our view of the meaning of the facet, "Road" and, the difficulties it may pose in certain instances.

For the purpose of this essay we shall adopt the definition of a road which is contained in part one of (Sect 2 interpretive section) the Roads and Road Traffic Act

(herein after referred to as "the Act" as follows:-

"A road is a highway and any other road to which the public has access, any public place to which vehicles have access and any road in any residential area whether access to it is restricted or not which is part of a Municipality township and includes any bridge, for or other work in line of such a road".

Having defined the first facet of road safety ("Road"), we now propose to define the other facet namely; "Safety".

The word "Safety" entails the condition of being free from danger or risk.<sup>4</sup> The risk being avoided may include anything which is injurious <sup>to road</sup> users namely road traffic accident, fires and floods. From the definitions suggested above it is submitted that the phrase "Road Safety" therefore, means that all persons who make use of roads should be free from danger. It is ofcourse impossible to have a condition where a road user is completely free from danger. In this essay, the author argues that an effort must be made to ensure that the risks of danger are reduced as much as can be practically possible. Some of these risks are what part XIII of the Act seeks to prevent.

## 1.2 THE TRAFFIC ENVIRONMENT

This includes cyclists, pedestrians and motorists.

a. The cyclist: These are persons who use bicycles as a mode of transport. A bicycle is of the popular means

of transport to and from work among the wage earning community in urban Zambia especially in the peri urban shanty township which have rapidly mushroomed our cities.

The road traffic environment has almost already ignored this class of road users. Some urban roads have cycle trains running parallel to them which are used by cyclists. This class of road users are also protected by the Act. Certain provisions of the act could be amended to reduce the risk of danger for this class of road users.

- b. The Pedestrian: This class comprises persons who do not drive motor vehicles. Persons who walk from place to place in contrast to those who drive from place to place. They constitute the largest single group of road users. (It is equally important to consider them both in Act and this essay. Several provision of the Act can be amended or introduced in order to ensure safety on this class of road users).
- c. The Motorist: A motorist is a person who drives regardless of whether he drives a bus or a car. The act protects this class or of persons as well.

Provisions of the Act may be enforced against any kind of motorist regardless of what type of vehicle he is driving. In the case of Florence Munthali v AG the Judge held among other things that a driver of an ambulance be it an emergency or not is under a duty to

obey provisions of the Act by obeying road signals and rules. The same applies to persons during water tanks for extinguishing fires.

Although there is no judicial authority for the proposition that the presidential motorcade is exempt from this sweeping generation (that all motorists should obey road signals) it is submitted that for security reasons the presidential motorcade in Zambia is exempt. The motorcade does not stop at a traffic light or give way sign.

### 1.3 THE NATIONAL AND IMPORTANCE OF ROAD SAFETY

Road safety was formulated as the need to reduce road accidents increased. Road accidents are caused as a result of conflict between the various types of road users. According to Mr. Chipawa, the present Road Traffic commissioner, the need for road safety increases as the need to combat conflict <sup>risers</sup> ~~also~~ Road Safety seeks to train all road users to be more careful in the manner in which they conduct themselves on the road so as to keep danger and risk away from the roads as much as possible.

The need for road safety cannot be over emphasised. Zambia is facing a severe road accident problem. Since the beginning of 1995 up to March 31st, 1995. More than 40 (forty) people have died in road accidents.<sup>6</sup> Clearly road accidents constitute one of the major killers in Zambia. There is need,

therefore, to encourage road safety to prevent further losses of lives.

#### 1.4 **EVOLUTION OF THE NOTION OF ROAD SAFETY**

The development of the notion of Road safety is in two parts namely:-

- (a) Prior to the enactment of chapter 766 of the laws of Zambia.

- (b) **After the enactment of the Act.**

- (a) Prior to the enactment of chapter 766  
(Hereafter referred to as "The Act")

The debate to introduce Road Traffic Law begun as early as 1921. There were debates between the secretariat, the equivalent of the executive, and the legislative council, the law making body in Northern Rhodesia (currently Zambia). The then economic secretary Mr. Leversidge argued on the legislative council that there was need to update the road Traffic Laws.

It was then decided that a law be enacted and it be called the Road Traffic Ordinance of 1958. This ordinance was a combination of three ordinances namely; The motor Traffic Ordinance (chapter 172 of the laws of Northern Rhodesia) The Roads and vehicles ordinance (chapter 174 of the Laws of Northern Rhodesia) and the width of tyres ordinances (chapter 173 of the laws of Northern Rhodesia).



The 1958 Road Traffic Ordinance is the predecessor of the current Road traffic Act. The current act is a carry over from the colonial legacy.

The notion of Road safety was prevalent in Northern Rhodesia just as it is today. There were provisions in the various ordinance and finally in the 1958 ordinances which sought to ensure safety of the various road users. One such ordinance is the width of tyres ordinance (chapter 173 of the laws of Northern Rhodesia). This law sought to prevent Road Traffic Accidents by prescribing the width of tyres 7.

b. Under the enactment of the Act.

After Zambia obtained independence in October, 1964, the Road Traffic Ordinance was carried over into the new republic save that the name was changed to the Road and Roads Traffic Act. To date the provisions of the 1958 ordinance are still embodied in the Act save the figures have been adjusted to fit current times. A few amendments have also been made to slightly modify the Act. One such amendment was made via statutory instrument No. 1 which imposes a prohibition on the importance of left hand cars into Zambia. The notion of Road Safety is

prevalent to day just as it was during the colonial period. All the provisions in the 1958 ordinance have been carried on into the current Act indicating that there is still a growing concern towards Road safety.

### END NOTES

1. Hailaburys Laws of England. volume 38, Fourth Edition  
Butterworks Publishers, London, 1989, Page 461
2. 1951 All ER 1010.
3. 1956 cron LR 157
4. Longman Dictionary of contemporary English, New Edition,  
Longman Publishers, 1990, page 921.
5. 1980 ZR 157
6. Statement made by the Minister of Power, Transport and  
Communication. Mr William Harrington on the "Zambian  
challenge" television programme on the 7th March, 1995.
7. Northern Rhodesia Hansad No. 3 of 1958.
8. IBIP page 752.

## CHAPTER TWO

### THE INSTITUTIONAL FRAMEWORK OF ROAD SAFETY AND WEAKNESSES OF THE EXISTING FRAMEWORK

In this chapter we propose to discuss the institutional framework of road safety. We shall then proceed to discuss the weaknesses of the current institutional framework..

To open the discussion, this author shall give a brief background of the need to enforce road safety in Zambia. We shall state the institutional framework of road safety in Zambia and its weaknesses.

#### 2.1 Background

Zambia is currently facing a severe road accident problem as evident from the first few weeks of this year (1995) where about forty (40) persons have died in road traffic accidents.<sup>1</sup> Accidents have infact become one of the country's major killers besides AIDS and Malnutrition.<sup>2</sup>

One of the causes of road accidents is carelessness on the part of the drivers. Other reasons include the use of unroad worthy vehicles, deterioration of the existing road infrastructure, the limited finance allocation to the various organs and departments responsible for road safety and most important of all the composition of these organs and departments responsible for road safety.<sup>3</sup>

There is an urgent need to avoid road traffic accidents. One of the ways of avoiding road traffic accidents is by combating the causes that have been identified above. This can be achieved if there is a machinery or place to ensure that these causes are excluded and thus road safety is achieved.

The need to avoid road traffic accidents can not be over emphasised. Besides bringing pain and misery to the relatives of victims of accidents they are a drain on the nations limited resources. This drain was echoed by Phiri when he stated that "Road Traffic Accidents have a major impact on health services and health expenditure".<sup>4</sup> Phiri further explained that expenditure carried comes about where there is need to provide emergency facilities such as ambulances at accident scenes. Provision of such services calls for unavoidable expenditure since vehicles need fuel to run and purchasing fuel calls for expenditure.

As the author states earlier on, the objectives of ensuring road safety can only be achieved if there is on place an institution to ensure that this objective is achieved. In the ensuring discussion we propose to state the institutional framework of road safety in Zambia.

## 2.2 INSTITUTIONAL FRAMEWORK OF ROAD SAFETY IN ZAMBIA

Road safety is a concern of the Government as a whole. Almost all Government Ministries contribute to the enforcement of road safety.<sup>5</sup> The major contributions, however, is from the Ministry of Transport and Communication. We propose to discuss the contribution

made by the:-

- (a) Ministry of Health
- (b) The Ministry of Works and Supply
- (c) The Ministry of Home Affairs and lastly
- (d) The Ministry of Transport and Communications.

a. The Ministry of Health

The Ministry of health contributes to road safety by holding seminars and talks, teaching people how they should behave or conduct themselves in the road in order to avoid traffic accidents. It further contributes to road safety by provision of emergency and ordinary services to victims of road traffic accidents.

b. The Ministry of Works and Supply

This Ministry is responsible for construction, care and maintenance of roads, putting up signals such as traffic lights and road signs. One of the causes of traffic accidents as highlighted earlier on was the deterioration of the existing road infrastructure. The Ministry by constructing, caring for and repairing roads makes a major contribution in combating one of the causes of traffic accidents highlighted above. By doing so, the Ministry of Works and Supply is ensuring road safety.

c. The Ministry of Home Affairs

As stated in the background, another cause of traffic accidents is the use of defective motor vehicles. The solution to this problem is basically the Ministry of

Home Affairs. The Police is under the Ministry. The Police have a wing called the traffic wing whose duties include ensuring safety of the users.

To achieve this objective the Police mount road blocks constantly to check road worthless of motor vehicles on the road.<sup>7</sup> The traffic wing also seeks to ensure the provisions of the Roads and Road Traffic Act ("the Act") are obeyed. When these officers find a person violating any of the provisions of the Act they either warn the offender of the consequences of his actions or they charge him with an offence. Where a person charged with an offence admits the charge, the person will have to pay a fine which goes into Government revenue. Where an offender, on the other hand, denies the charge against him his vehicle is impounded and the matter is referred to Prosecutors. The prosecutors then open a file and prosecute the offender.<sup>8</sup>

By ensuring that provisions of the Act are obeyed, by mounting road blocks and constantly checking fitness of motor vehicles on the road the traffic wing is contributing to Road Safety.

d. The Ministry of Transport and Communication

The Ministry contributes significantly to road safety in Zambia. There are two organs under this Ministry namely the Road Traffic Commission and the Road Traffic Board which carry out the function of enforcing road safety.

The Road Traffic Board is a creative of section 55 of the Act. The provision states:-

"The Minister shall from time to time and by gazette notice constitute a local authority, a board hereafter the Road Traffic Board consisting of not less than four and not more than seven members."

There is no express provision providing for establishment of the Road Traffic Commission. The establishment of this Commission is implied from the fact that Section 58 of the Act provides for the appointment of a Road Traffic Commission.

The department of the Commissioner is what is called the Road Traffic Commission.

Although the Act provides for not more than seven members the Board has about 35 officers to carry out its functions. These extra number of employees are Secretaries. Accountants and Clerks who assist in the daily administrative work of the Road Traffic Board (The Board). It is important to note that apart from the officers who are appointed by the Minister under Section 55 of the Act 10 the rest of the employees are Civil Servants who are seconded to the Board by the Public Service Commission through the Ministry of Power, Transport and Communications.

All in all, these are the institutions through which road safety is enforced. Their proper or improper functions ~~inevitably~~ <sup>inevitably</sup> ~~inadavable~~ affect road safety. In



the ensuring discussion we propose to highlight the weaknesses of the current institutional framework of road safety.

## 2.3 WEAKNESS OF THE EXISTING INSTITUTIONAL FRAMEWORK IN ZAMBIA

We feel it important to discuss the weaknesses because they affect the Road Traffic Board in terms of fulfilling its objectives. The performance of the Board is measured in terms of its ability to carry out its objectives. The main objective of the Board is to ensure safety on the road. This author has outlined four major weaknesses of the institutional framework.

### (a) FUNDING

Funding is a source of impairment on the Board in terms of its capacity to fulfil its objectives. The Board is not adequately funded to carry out its functions effectively. For instance, in the 1994 National budget of 690 Billion Kwacha the Ministry of Transport and Communications received 3 Billion Kwacha out of this, the Board was allocated 445 Million Kwacha. Expressed in percentage, only 0.06% of the national budget was devoted to road safety. From the foregoing, it is evident that Traffic Safety Programmes are not given priority. The propos<sup>ed</sup>~~al~~ funding for 1995 is K600 Million Kwacha. This is slightly more than last year's

allocation. Even though this money is proposed for the purposes of Road Safety, due to inflation and priorities of the Ministry and the Board may not get all the money allocated to it. When money received is not enough, the Board instead of using the money to enhance road safety will be used on other matters such as organisation of the Board.

The Board needs money to hold seminars, talks, print pamphlets and other materials. These need to be distributed to the public in order to educate them on how they should conduct themselves on the highway in order to avoid traffic accidents.

Funding is really an impairment on the proper functioning of the Road Traffic Board and must be addressed immediately.

(b) Lack of Co-ordination and Co-operation

Another weakness of the institutions of Road Safety is that of lack of Co-ordination and co-operation among the various road safety agencies. For instance there is no co-ordination between the Ministry of Home Affairs and the Ministry of Transport and Communication. This is seen for example from the fact that when a road block is mounted by the Police the latter Ministry may not be aware. Furthermore, it is the Police who are responsible for charging the accused with an offence under the Roads and Road Traffic Act. More often than not the Police charge persons with

contravening Section 195 (careless driving,) 192 (Over-speeding) or 196 (reckless driving.) They avoid charging under S197 which is a more serious offence. Serious in the sense that it is the only offence which has no option of a fine. Once a person is convicted he has to be confined for a period of at least 6 months. The Road Traffic Board has no say in how or under what section a person should be charged. They do not communicate with the Police as to what section a person be charged.

The Road Traffic Board cannot dictate to the Ministry of Works and Supply how it carries out its function. (cannot dictate the Ministry of Works and Supply to put up signs). At the moment there are no road signs speed limits along Great East Road and Addis Ababa Drive which are highly used in Zambia.

Another illustration can be seen when one examines the relationship between the Ministry of Works and Supply and the Ministry <sup>of</sup> Transport and Communications. The former are responsible for care, maintenance and construction of roads. The latter have no say and may not even be aware of when, where or how a road may be constructed in an area.

An expert in the field of road safety state that there is need for these various departments to

co-ordinate and co-operate.

c. Administrative Nature of the Board

Another weakness of the Board is that its functions are purely administrative in nature. The role of the Board at the moment is more administrative than practical. The personnel at the Board are Civil Servants who are assigned to the Board by the Public Service Commission. These employees are not trained in matters of Road Safety or Traffic. The Board needs persons who are trained in matters of road safety because they will have a keen interest in enforcing road safety.

d. Lack of Planning and Research

There is no specific department in Zambia which has the task of planning, researching and establishing policies pertaining to road safety. A Board such as the one in issue requires experts to plan, research and establish policies. It is essential to establish policies and goals for road safety. Most of the Road Safety Programmes in Zambia are made on Adhoc basis and are not running successfully due to lack of functioning and research.

Having discussed the institutional framework of Road Safety in this Chapter, in the next Chapter we shall discuss part xii of the Roads and Road Traffic Act.

### END NOTES

1. Harrington William Paper Presented on Television Programme challenge on 17th February, 1995.
2. IBID
3. London Ngoma, Paper Presented to the Ministry of Power, Transport and Communication on 9th February, 1995.
4. Mannase Phiri, 'Road Carnage Poses Public health Problem' Times of Zambia, 10th November, 1994 page 4
5. IBID
6. IBID
7. Mubiana B, Transport Officer, Force Headquarters, Ministry of Home Affairs, May 19th, 1995.
8. IBID
9. Roads and Road Traffic Act of 1966.
10. London Ngoma, Director of Road Traffic Board, July, 1995.
11. London Ngoma, IBID
12. IBID
13. IBID

### CHAPTER THREE

#### AN EXAMINATION OF PART XIII OF THE ROADS AND ROAD TRAFFIC ACT

In this chapter, we propose to examine the particular provisions found in part XIII of the Act. This part of the Act embodies the offences. It is these provisions that seek to ensure safety for road users.

The Act being a voluminous piece of legislation, both time and space will not allow us to discuss the provisions in part XIII of the Act. The focus therefore shall be sections 192, 193, 194, 195, 196, 197 and 198. However, we shall give a brief outline of the Act before we proceed to discuss the provisions.

The Roads and Road Traffic Act contains fifteen parts. The parts may be outlined as follows: The first part contains provisions empowering the Minister of Transport and Communications to bring it into force whenever he deems it necessary to do so. The Minister under this part of the Act has the power to declare by Statutory Instrument the coming into force of different sections of the Act on different days.

The second part of the Act contains sections 2 to 30. These sections contain provisions about roads. These include classifications of roads, exemption of some roads from the application of the Act and prescription of the roads that are dedicated to public use.

In the next part of the Act, that is, sections 31 to 54 provide for the care, maintenance and construction of Roads. This includes the liability of highway authorities and their

staff.

Provisions for the establishment of Road Traffic Board can be found in the fourth part of the Act (Sections 55 to 63). Part five of the Act, that is sections 64 to 82, provides for the registration of Motor vehicles and trailers.

The seventh part of the Act provides for the issuing of driving licences and testing of motor vehicles. Further provisions for driving licences and suspensions of driving licences, cancellations and endorsements thereof can be found in part 8 of the Act. (Sections 110 to 121).

Compulsory and third party insurance is constituted in the ninth part of the Act. (Sections 133 to 146) Sections 147 to 165 constitute public service vehicles and public services parts II and 12 consist of provisions for examination of certain classes of vehicles and exclusive concessions respectively.

Part 13 of the Act contains the offences and their penalties. This part of the Act is the focus of this chapter. Part 14 and 15 consist of the miscellaneous provisions.

### 3.1 PART XIII OF THE ACT

As we have already noted this is the part of the Act that creates offences relating to the use of roads. It is not however the intention of this author to discuss this part of the Act in its entirety. Accordingly, we propose to focus on the following provisions sections 192, 193, 194, 195, 196, 197 and section 198.

### 3.2 Section 192 Overspeeding

This section provides that the Minister may by Statutory

Instrument; provide the maximum speed for a particular road or motor vehicle.

Zambia roads that are busy such as Independence Avenue and the Great East Roads have prescribed maximum speeds of 50km and 80km per hour respectively.

Heavy duty motor vehicles such as trucks carrying bulky and heavy material also have a speed limit. For example, trucks which carry maize from rural areas have a prescribed speed limit of 40km per hour. This is usually written on the them.

The law under the same section provides that a person shall not be convicted of overspeeding by the mere fact that in the opinion of the <sup>witness</sup>~~weakness~~ he was driving faster than the speed limit.

What this section entails is that there is provided a recommended speed for a particular road or motor vehicle. When a person exceeds this speed he is liable for an offence under section 192 of the Road and Road Traffic Act.

Furthermore, the Act provides that in order for a person to be convicted of an offence under this section there must be more than one witness testifying to the effect that indeed the accused exceeded the recommended speed limit.

The first weakness with this provision is in Zambia is that it is difficult to detect persons who are overspeeding. Unless a Police officer is behind the person who is overspeeding it is almost impossible to detect that a person is overspeeding. In Zambia there are no speed traps or other instruments to ensure compliance with this law.



Furthermore, the Ministry of Works and Supply is not doing all it can to serve the public. Main roads such as the Great East Road and Addis Ababa Drive have no road signs limiting the speed of motor vehicles.<sup>2</sup>

In Zambia most of the motor vehicles that are used are imported from countries like Japan and South Africa. These countries in terms of technology are very advanced. The cars they manufacture travel at great speed. These countries are able to solve the problem of overspeeding by use speed traps and other equipment. Out of the population of 400,000 motor vehicles, more than three quarters are imported. This only goes to show how many cannot be detected due to lack of the necessary equipment.<sup>3</sup> This law is obviously difficult to enforce.

### 3.3 Section 193: Racing

This section provides that any person who provides and takes part in any trial of speed between motor vehicle on a road save with the authority of the Commissioner of Police shall be guilty of an offence and shall be liable upon conviction to a fine.<sup>4</sup>

The first question that one may ask after reading this provision is; now does a person determine that two persons are trying the speed of motor vehicles? Surely, can a Police officer who sees two cars driving side by side assume that they were competing? It may be much easier to convict a person under section 192 than this provision. It is so much easier to prove that a person exceeded the speed limit than to say two people were competing. In view of the fact

that section 192 is easier to prove and that the two sections save the same purposes this law serves no purpose.

#### SECTION 194

This provision exempts certain motor vehicles from being liable under sections 192 and 193. Motor vehicles that are genuinely in a hurry for instance fire engines and Ambulances are protected by this provision.

#### 3.4 SECTION 195; Careless Driving

The essential element of this provision is that a person must be seen to have conducted himself on the road in such a way that any reasonable person would say that he was not showing care or concern to other road users.

The test of exercising due care and skill is purely objective and it is the same for novice and experienced drivers.<sup>6</sup> The standard of care required is impersonal and universal. It is fixed by reference to other road users. The degree of care and attention called for is that of a reasonable and prudent driver. Lord Goddard in the case of Simpson v Peat<sup>7</sup> put it thus:

"The test for the offence of careless driving is that of negligence ..... was the driver/s accused exercising that degree and attention that a reasonable and prudent driver would exercise in the circumstances?"

This provision provides a good foundation for punishment of persons whose conduct on the highway is perilous to others. This is a good provision as it is objective. The court will rely on the evidence before it to examine whether the

defendant in the circumstances of the case acted reasonably.

### 3.5 SECTION 196: Reckless driving

This section provides that any person who drives a motor vehicle upon a road in manner which is dangerous to public safety shall be liable to a fine or imprisonment not exceeding five years or both.

The test for reckless at common law is subjective. Recklessness is the deliberate taking of an unjustifiable risk.<sup>10</sup> The house of Lords in the same case state that ~~mens~~<sup>it</sup> ~~there~~ ~~rea~~ was to be a conviction the vehicle should have been driven in such a way as to create an obvious and serious risk. It must be proved that the accused had given no thought of the possibility of risk and that he had proceeded despite the risk.<sup>11</sup> Damage need not be proved.

Where a person is prosecuted for reckless driving the best evidence is the extent to which his conduct affected other road users. One example could be the extent to which another person's car was damaged or how many people died<sup>e</sup> as a result of the defendant's conduct.

The problem which arises in relation to this provision is that by the time the matter comes up for hearing the evidence (for instance a damaged motor vehicle) would not be there, at any rate, not in the same form as at the time of the accident. In case of a motor vehicle it would have been repaired.

Another part worth noting is that the ~~waiving~~<sup>wording</sup> of the Act excludes pedestrians. Only a motorist can drive. There are instances when pedestrians conduct themselves in a manner

which is dangerous to public safety. An example of reckless conduct on the part of pedestrian is where he or she stands in the middle of a busy ROAD. Drivers may collide in trying to avoid such a pedestrian. This section needs immediate attention. It should be reworded to include pedestrians whose conduct on the highway is perilous to others.

3.6 SECTION 197: Driving under the influence of alcoholic drink or drugs

The provision provides that any person who, when in charge of a motor vehicle is under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of a vehicle shall be guilty of an offence and shall be liable to imprisonment not exceeding 6 years.

It is important to note at the outset that it is not enough that the accused was intoxicated the ~~time~~ he was in conduct of a motor vehicle. The accused must have been in a condition of being incapable of having proper control of the motor vehicle in question!

Section 198 provides that a person who is charged with an offence under section 197 may provide, urine samples to be tested. The use of the word 'may' obviously does not compel a person to produce a urine sample. This provides a loophole and must be addressed immediately.

Another weakness with this provision is that, in Zambia we do not have equipment to measure the extent to which a person was intoxicated.<sup>3</sup> One piece of equipment that may be used

is a breathalyser. Since we do not have such equipment the prosecution have to rely on expert or non-expert evidence. The non-expert witness can only testify as to whether the accused had taken alcohol and not the facets. The expert can only testify on the basis of medical or other proof (depending on his profession.) Sometimes experts may have not having perceived the material evidence on their own.<sup>12</sup>

This provision is the most serious of all the provisions discussed so far because it is the only provision which has no option of a fine. Because of the weakness discussed above the Police prefer to charge persons under other provision. These weaknesses need to be addressed urgently as all provisions are necessary in order for the roads to be safe. The enforcement of these provisions heavily depends on the Police. The Police insist that all these provisions do not exist. Further that only causing death is enforceable.

In the next chapter, we shall examine the Judicial attitude towards the provisions discussed in this chapter. We shall show, how the Judiciary interpret these provisions and their attitude towards Road Safety.

## END NOTES

1. Section 192 (a) AND (b)
2. Harrington William, Paper Presented on Television Programme: Zambian Challenge, February, 16th 1995.
3. London Ngoma (Director, Road Traffic Board) Paper Presented to the Ministry of Transport, and Communication, 14th February, 1995.
4. Roads and Roads Traffic Act, Section 193 (a).
5. Ante Page
6. Kitchens R Road Transport Law, Camelot Press Limited London, 1973, Page 44.
7. Macrane V Ridding 1938, 1 ALL ER 157.
8. 1952 1 LL ER S17
9. IBID Page 523
10. The Lawrence Case, 1980 ALL ER 17
11. IBID Page 17
12. Kitchens, R, Road Transport Law, camelot Press Limited, London, 1973, Page 52.
13. Mubiana B. Transport Officer, Force Headquarters, Ministry of Home Affairs, May 19th at 11 hours.

## CHAPTER FOUR

### JUDICIAL ATTITUDE TOWARDS ROAD SAFETY.

In the previous chapter we discussed five provisions in the Roads and Road Traffic Act. In this chapter we propose to discuss to examine the attitude of the judicial towards Road Safety. We shall then make a comparison with courts in England. Particularly, we shall consider the attitude of the judiciary towards interpreting the sections that were discussed in the previous chapter.

There are two classes of cases that go before the courts;

- a) Those for which original jurisdiction lies with the principal resident magistrate.
- b) Those that may be prosecuted in magistrate courts.

Road Traffic Offences such as speeding, careless driving and driving under the influence of alcohol or drugs may be prosecuted in magistrate courts whereas offences such as causing death by dangerous driving are presided over by the principal resident magistrate.

Courts are a passive machinery as such they only have jurisdiction over matters properly brought before them. The court does have power to substitute a charge but this can only be done if the substitute is for a lesser offence.<sup>1</sup>

Before any court adjudicates over an offence under the Road and Road Traffic Act it <sup>to</sup> has ~~been~~ established that the person who stands accused of that offence is actually the person who was

driving the motor vehicle at the time of the alleged violation.

The courts may hold that a person was driving a motor vehicle even though in the real sense he was not driving. In the case of Henderson v Jones<sup>2</sup> a person who was asleep in a car and not in control of his actions was nevertheless held to have been the driver of the car.

A similar conclusion was reached in the case of Wallace v Mayer<sup>3</sup> where the defendant who merely steered a broken down vehicle which was being towed was held by Lord Goddard to have been the driver of the vehicle.

For the purpose of this essay, a driver of a motor vehicle is the person who is in control of the motor vehicle at the time of the alleged violation. The degree of control is irrelevant.

#### 4.1 Judicial attitude towards section 192

This section provides (as was stated in the previous chapter) for the offence of driving faster than the recommended speed limit. The penalty for this offence is a fine.

The magistrate warns himself at the outset that the onus is on the prosecution to prove its case. The offences committed under the Roads and Road Traffic Act are criminal in nature. The burden of proof therefore is on the prosecution and it must be beyond all reasonable doubt.<sup>4</sup>

A person accused of having contravened section 192 of the Act must be proved to have been driving the motor vehicle in question and he must have exceeded the recommended speed limit.

All these elements were illustrated in the case of the



The people v Charles Kaimba.~~4~~ The accused was driving a van along a public road. Two cars which were immediately ahead of his car slowed down and eventually stopped their cars. Due to the speed the accused was driving at, he was unable to bring his car to a halt.

The magistrate made mention of the fact that it was important to establish that the accused is the person who was in conduct of the motor vehicle at the time of the alleged violation. After satisfying himself to the fact that the Charles Kaimba was the driver of the motor vehicle in question the magistrate warned himself that the burden of proof was on the prosecution.

After examining the facts of the case the magistrate stated that it was important to bring to book persons who had violated provisions of the Roads and Road Traffic Act as they endanger the lives of other road users.**5**

In delivering judgement the magistrate stated that even though, there was no one to testify as to the actual speed of the accused's car, the court found that he was overspeeding. The court found as such due to the fact that there was a distance between the accused's car and the car he rammed into. Furthermore, two cars which were ahead of his car had slowed down and had notified other people who were behind them that they were stopping.

The magistrate found that the only reason why the accused failed to bring his car to a halt even after being given ample notice was because he had been driving faster than the recommended speed limit. What made matters worse

for the accused, all cars that were behind him were able to stop on time to avoid the collision.4

The court found Charles Kaimba guilty of contravening section 192 of the Roads and Road Traffic Act and fined him K20,000.

As we discussed in the previous chapter(6) the law requires that if a person is to be convicted of a Road Traffic Offence the evidence against him must be corroborated. There are exceptions to this rule; where a police officer follows the accused between two points at the same time read the speedometer which confirmed that the accused had exceeded the speed limit the evidence if the police officer us said to be corroborated by his speedometer readings. Such was the holding in the case of Nicholas V Perry7

Unfortunately, even though courts were willing to convict persons who overspeed there are not many courts going before one courts. The courts being passive are restricted to preside over matters that are properly before them. Less than 10% of the cases based in the Act focus in section 192.

One jurist8 argued that most accidents are caused by overspeeding. Overspeeding, he said, is usually an element in all offences under the roads and Road TrafficAccidents. The driver was overspeeding. The Police should consider prosecuting consider prosecuting persons under this section. Several people overspeed but they are not prosecuted. Accidents could be prevented. People must be discharged

from overspeeding by prosecuting them.

.2 **Section 193: Racing**

This section provides that if two persons without the authority of the Road Traffic Commissioner test the speeds of their respective cars they shall be liable for an offence under section 193 of the Act.

The elements to be proved in this provision are similar to those under section 192. The only distinction between the two is that under section 192 one driver may suffice whereas under section 193 there must be more than one driver. The courts are yet to preside over a case where they will interpret this provision. Since the courts are a passive machinery, they will wait until a case comes before them.

.3 **Section 194: Exemption**

This section provides for the exemption of fire Engines and ambulances from the operation of sections 192 and 193 of the Act.

Courts, even with the provision of such exemptions strictly interpret the law. The high court had the opportunity of interpreting this provision in the case of Florence Munthali v The Attorney General.<sup>8</sup> The facts of the case was that a Government Ambulance was rushing a patient to the University Teaching Hospital. The driver of the ambulance assumed that all other motorists along the way would give him way. The plaintiff's car collided with the ambulance at traffic lights.

The interpretation of the court in this case was very

interesting. After examining the facts of the case the judge made mention of the fact that the mere fact that fire engines and ambulances are exempt from the operation of sections 192 and 193 does not mean that driver of such vehicles can conduct themselves carelessly. He also stated that such drivers must always 'bear in mind the safety of other road users. The court held that in the circumstances of the case the driver was careless and that damages be paid to the plaintiff.

Clearly this is a very strict view. This kind of attitude from the courts can prevent overzealous ambulance and fire engine drivers from endangering the lives and property of other road users. The holding in the Florence Munthali case definitely serves as a warning to several drivers. The stand taken by the courts is dentately a good one and must be maintained.

#### 4.4 **Section 195: Careless Driving**

This section provides for the punishment of persons whose conduct on the highway is such as the suggest that he showed no care or concern for other road users.

Like all other offences under the Act, the prosecution bear the burden of proof. The prosecution have to establish that the accused was the person who was driving the motor vehicle at the time of the alleged violation.

The person who is accused, in order to be convicted, must have conducted himself in such a manner that will suggest that he was not showing care or concern to other road users. The test the courts use in determining whether

or not person was careless is the objective test. The test is the same for both learning and experienced drivers.<sup>10</sup> In order for the court to hold that someone was a careless driver the person should have acted unreasonably. Courts require that unreasonableness or carelessness be proved.

A case worth considering at this point is that of The people V Kanuti Mubukwanu.<sup>11</sup> The accused was charged with two offences; causing death by dangerous driving and careless driving. The accused run over a pedestrian along the Great East Road. HH Ndlovu delivered judgement. We find it necessary to quote the actual words of the judge as they show a very strict view. He state:

"First offenders are entitled to some leniency. We must also note that Road Traffic Accidents are on the increase. If offenders are dealt with sternly it would deter other motorists from being careless on the road.

It is the motorist who should be dealt with sternly because in the event of a collision between a motorist and the pedestrian the pedestrian will be at a greater disadvantage. For the sake of safety of other road users and deterring potential offenders people like the accused must be dealt with severely."

The above quotation clearly shows that the courts have taken a strict attitude. However, in the case at hand the accused was sentenced to two years imprisonment with hard labour and fined K1,000. ~~000~~.

The accused in the case killed a person by the conduct

of his motor vehicle yet he received a two year sentence. It is our humble submission that the sentence meted out does not match the strict ('stern') attitude of the courts. Why should a person who has deprived another person the full enjoyment of his life get away with a two year sentence.

In the case of The people v Jill <sup>12</sup> a national of Senegal was charged with careless driving. The accused had an argument with the deceased. The deceased was thrown out of the place where the argument had taken place. The accused not being satisfied with what had transpired followed the deceased. The deceased refused to talk to him and walked away. The accused then got into his car and followed the deceased. He attempted to run over the deceased but the deceased managed to jump out the way in time. After a chase of about 15 minutes in paths and pavement the deceased was run over by the accused and he died on the spot.

Initially the accused was charged with careless driving but after realising that the accused would have gotten away with a fine the prosecution withdrew this charge and substituted it with murder. Jill (the accused) was then convicted and sentenced to 20 years imprisonment.

If the defendant had been prosecuted for violating section 195, (careless driving) he would have probably gotten away with a suspended sentence or a fine. The fact that the prosecution preferred to use another Act other than the Roads and Road Traffic Act shows that either the Act is not punitive enough or the courts do not take matters of

Road safety seriously.

#### 4.5 **Section 196: Reckless Driving**

This section provides for the punishment of persons convicted of negligent conduct on the highway.

Very few cases go before the courts under this provision. Courts use the subjective test to determine whether or not a person was reckless. Reckless has been defined in several cases. In the case of Arnold v the people<sup>12</sup> it was defined as the deliberate taking of unjustifiable risk where it is evident that a risk has been taken by a person in conduct of a motor vehicle is unjustified the courts strictly deal with the accused. This author is of the view that strictness varies from court to court and from judge to judge.

The judge in the case above was very strict and reading the judgement one could tell this kind of attitude.

The facts of the case were that the accused was coming from Lusaka International Airport. He was rushing into town. When he got to Chainama Hills Hospital he notice a big truck ahead of his car. as the recommend for the truck was 40 km per hour the truck was moving slowly. The accused then decided to overtake the truck. He, in the process under estimated the speed of the car which was coming from the opposite direction.

After establishing that the accused was the person who was in control of the motor vehicle at the time of the alleged violation, the court proceeded to the next step. The next step requires the prosecution to prove its case beyond reasonable doubt. The accused pleaded guilty to the charge of careless driving and his defence was that he had misjudged. The speed of the other car.

Judge Chanda when delivering judgement raised a number of points which are important for the enforcement of road safety. In his opening remarks he said that violation of part Xiii of the Road Traffic Act were becoming prevalent in the country. He also made mention of the fact that lives were being lost, other people were being maimed for the rest of their miserable lives and most of the time there was substantial damage to property. He attributed all these problems to the fact that offenders were not being dealt with severely. He stated that punishing the guilty the lives and property of other road users.

The accused, Arnold Mulando, was given a three year suspended sentence. This meant that he could go back to society, so long he



was not convicted of similar offence he was for all intents and purposes a free man. Surely, can this deter potential offenders? It is abundantly clear that it can not. In addition, where a person is given a suspended sentence there is no follow up mechanism to ensure that he does not have a duplicate licence. For all we know, such a person can get another licence and continue posing a threat to other road users.

#### 4.6 **Attitude of the Judicial towards section 197**

This provision provides that any person who, when in charge of a motor vehicle is under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of a vehicle shall be guilty of an offence and shall be liable to imprisonment not exceeding six years.

This offence is considered as minor and therefore prosecuted by police prosecution. It is our view that this offence is serious in the sense that it has no option of a fine. A person convicted of this offence has no option of a fine even if he is a first offender.

The police rarely charge persons with this offence. One may argue that the police are not serious about enforcement of roadsafety.

If they were serious they would also be charging persons under this provision. By charging a person with this provision, some drivers would defiantly be deterred.

One jurist <sup>13</sup> has argued that if the police do not charge a person under a particular provision there is nothing they can do about it. He also gave examples of law the police ignore enforcement of road safety laws. One example he gave was that there were instances when government vehicles which had defective tyres or even brakes were let through road block merely because the driver said his department had no money to purchase the same. This ofcourse is not a legal defence but the police condone it. Another example he gave was that some drivers used leaves instead of reflective triangle when their motor vehicles broke down. These pose a danger to other roadusers as they did not reflect of night so that other drivers may not know that there is a stationary motor vehicle ahead.

By and large, the attitude of the judiciary towards road safety differs from court to court. Some courts take a serious view but their sentences reflect seriousness.

This position is similar to that in England.

One author states that seriousness rating was not associated with the penalty imposed. He further stated that magistrates who agreed to rate an offence as "serious" or very serious gave different sentences, much lesser sentences, for some other reason.

In Zambia, when a person is convicted of a Road Traffic Offence (RTO) in future when he is convicted of an offence the court will not include RTO'S on the list of "previous offences'

Furthermore where a person is a first offender, there is always an option of a fine. This is also the position in England. When fining a person, the courts have to consider the ability of the offender to pay; he must be able to pay (must have the ability to pay).

The judiciary certainly has to take a more vigilant and strict attitude towards road traffic offender.

In the next chapter, (chapter 5) we shall conclude and then make a number of recommendations as a mode of improving enforcement of road safety laws.

### END NOTES

- . Chapter 146 of the Laws of Zambia
- . 1951 1 ALL ER 157
- . 1964 AC 17
- . The people v Charles Kaunda, 1993 HP (unreported)
- . IBID
- . Chapter three, Page
- . 1979 AC
- . Timothy Katanekwa, Deputy Registrar of the High court,  
25 July, 1995
- . 1980 ZR 123
- 0 1957 1 ALL ER 157
- 1 1993 HP (unreported)
- 2 **1993 HP (unreported)**
- 3 Timothy Katanekwa, Deputy Registrar of the High court,  
126 July, 1995
4. Roger Hood, sentesing the Motoring offense, Hennman  
Publishers, London 1972 page 141.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### CONCLUSION

We said in our introduction that the basis for this research was the need to stimulate public awareness towards road safety because people were dying in numbers as result of Road Traffic accidents.

In the first chapter we attempted to discuss the history and development of Road Safety. We established that debates took place between the executive and legislative as early as 1921 to formulate Road safety Policy. We also established that Road Safety developed in two stages, namely, the pre 1964 period and post 1964 period. In both periods there respectively was and still is a genuine concern for Road Safety.

In the second chapter we attempted to discuss the various institutions that administer and enforce road safety. We found that there were basically four Ministries that do so namely the Ministry of Health, the Ministry of Home affairs, the Ministry of Works and supply and lastly the Ministry of Transport and Communication. We pointed out that as a result of problems associated with the Institutional Framework there are weaknesses with the enforcement of Road

Safety. The first weakness we identified was that there is no co-ordination or co-operation between the various institutions that enforce road safety. We also established that there was no planning or research for Road Safety. Another problem we identified was the fact that the major enforcement agency namely the police were not doing as good as they should to enforce Road Safety.

Lastly, we concluded that the Road Traffic Board whose primary task is that of ensuring Road Safety is not adequately funded.

We then proceeded to the third chapter where we set out to analyse part Xiii of the Act. We particularly discussed sections 192, 193, 194, 195 and 197. We concluded that the existing legal provisions are sufficient to secure Road Safety although a few needed to be amended. We found that section 193 which creates the offence of Racing is not easy to prove and is rarely used. We also established that section 196 which provides for careless driving should be amended to include pedestrians whose conduct on the highway is perilous to others or careless. We also concluded that the police were reluctant to charge drivers with serious offences such as drunken driving created by section 197 of the Act.

In the fourth chapter we attempted to examine the judicial attitude towards Road Safety. Our case studies were England and Zambia. We concluded that in

both jurisdictions the judiciary takes a strict attitude towards Road Safety and will not hesitate to convict when all the Road Traffic offence are established.

One weakness we noted in this chapter was the fact that courts are reluctant to imprison a driver for a Road Traffic offence so that more often than not a convict got away with a fine. Another weakness we noted was that were a drivers licence was suspended there was no mechanism to keep a check to ensure that he did not use a duplicate licence.

In view of the problems outlined above we propose the following recommending which could enhance Road Safety in Zambia. Notwithstanding these recommendations however, the following solutions to enhancing Road Safety heavily depends on an efficient and effective enforcement system.

## 5.2 Recommendations

### a Follow up Aspect

There is need to keep a constant check on the Road Safety enforcement mechanism to ensure that it is working. This mechanism of enforcement is lacking in the enforcement of Road Safety today. For example when a drivers licence is suspended there is no mechanism in place to ensure that such a driver does not circumvent the law by obtaining and using a duplicate driving

licence.

b. **Funding**

The various institutions that enforce Road Safety need to be adequately funded in order for them to achieve their objective (Road Safety). Accordingly we strongly recommend that the Road Traffic Board in particular should be funded adequately. The Ministry of Works and Supply also needs more funding so that they repair road, set up speed traps, gauges and Road signs.

The Ministry of Home Affairs also needs more money in order to equip the police with such modern devices such as Breathanalysers for the sole purpose of proving drunken driving (section 197 of the Act) since drunken drivers constitute the bulk of the dangers to Roads Safety.

c. **Co-ordination and Co-operation**

We strongly recommend that all the Ministries which contribute significantly to Road Safety should be members of the Road Traffic Board. Currently, the Board is composed of about 35 members who are appointed by the Minister of Communication and Transport. The Board should be an independent entity established for the purpose of co-ordinating matters concerning



Road Safety.

d. **Planning and Research**

There must be established an institution outside government Ministries which will specifically have the task of researching, planning and establishing policies pertaining to Road Safety. This institution must be composed of persons specifically trained in matters of Road safety.

e. **The Police**

The task of enforcement is basically one for the police. The police are not very active in carrying out this role. We saw in the third chapter that the police <sup>do not</sup> charge Road Traffic offenders with serious offences. They insist that the only offences that exists is causing death by dangerous driving. Infact the police in most instances only charge drivers with serious offences in those cases where a death has resulted.

We suggest that the police should not hesitate to prefer whatever charges that a particular road traffic offender warrants. The idea of settling matters outside court through payment of a fine upon admission of charge should be discouraged at all costs as it opens up loopholes for corruption and

does not deter road traffic offenders.

f. **Courts**

Courts should adopt a very strict attitude in terms of sentencing. The courts should play an important role in the guaranteeing of Road safety by imposing stiffer penalties and sentences upon offenders.

Their sentencing policy can definitely deter potential law offender. The seriousness of a road traffic violation must be reflected in the sentence. Even for the purpose of mitigation in criminal proceedings, Road Traffic Offences should be considered as criminal in order to deter potential offenders.

We suggest that Zambian courts should adopt a sentencing policy similar to that in drug offences. Wherein the Zambian courts appear to have joined the international crusade against drug offences. In this way, death or damage on the roads can be significantly reduced.

g. **The Act**

Although Road Safety can be secured in this country through the innovation of the relevant provisions of the current Road and Road Traffic Act, it is suggested that the same should be amended in some respects in

order to make it more punitive. For instance the act can be amended to remove the option of fines for offences such as careless and reckless driving. Offences such as these should be reworded so as to include pedestrians whose conduct on the highway perilous.

### Bibliography

- Hailsbury's laws of England, Volume 38, Fourth Edition, Butterworths Publishers, London, 1989.
- Kaziya HB, Dissertation in Partial fulfilment for the award of a diploma in Business Management, April 1994, Lusaka.
- Kitchens, Road Transport Law, Camelot Press Ltd, Lond, 1979
- Longmans dictionary for contemporary English, London, 1990
- Ngoma London, Paper presented to the Ministry of Transport and Communication, 14th February, 1995.
- Nierkirk H>P Motoring Offences, Butteworths Publishers, London, 1989
- Roger Hood, Sentencing the Motoring Offences, Hienmon Publishers, London 1989.
- Statistics obtained from the Road Traffic Board, 1994 publication, Lusaka..

### CASES

Bacter v Middlesex County Council 1956 Cron LR 157.

Florence Munthali v AG 1980 ZR 123

Henderseon V Jones 1951 1 ALL ER 157

Mcrane v Ridding 1938 1 AI ER

Nicholas V Perry

The people v charles Kaimba 1993 HP (unreported)

The people v Kamuti Mubukwanu 1993 HP (unreported)

The people v Arnold Mulandu 1994 HP (unreported)

Wallace v mayer 1964 AC 17

### **Statutes**

Chapter 766 of the laws of Zambia. (The Roads and Road Traffic Act.