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THE ROADS AND ROAD TRAFFIC LAWS IN ZAMBIA:

DETERMINANT, CAUSE OR CONTRIBUTOR

TO THE ROAD CARNAGE

IN ZAMBIA?

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The Roads and Road Traffic Laws in Zambia: Deterrent, Cause or Contributor to the Road Carnage in Zambia?

L 411 OBLIGATORY ESSAY

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THE ROADS AND ROAD TRAFFIC LAWS IN ZAMBIA:

DETERRENT, CAUSE OR CONTRIBUTOR TO

THE ROAD CARNAGE IN ZAMBIA?

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Let it be known that the author alone is responsible for any open blunders, excesses and inherent shortcomings of this paper.

*IN LOVING MEMORY OF MY LATE FATHER
WHOSE UNFLINCHING PERSONALITY TAUGHT ME
THE DISCIPLINE OF LABOUR;
AND
TO MY LONE-MOTHER WHOSE
LOVE AND COURAGE TO ENDURE
SUFFERING HAVE BEEN MY
GREATEST SOURCE OF INSPIRATION
IN MY WHOLE LIFE OF ACADEMIA.*

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ABSTRACT

The subject of Roads and Road Traffic is becoming increasingly important in a rapidly urbanising society that Zambia is, and it is no less sensitive than the issue of state security. To both issues the protection of human life is of cardinal importance; and this through seeking means and ways of securing the life of individuals from bodily injury and/or death induced by external forces or factors beyond the control of an individual and by an individual's own contributing circumstances. It goes without saying that the high frequency of road accidents in Zambia, engendering physical disability and death for the accident victims, goes to show the amount of destruction that can be caused to both human life and property, if the prevailing trend in roads and road traffic law and practice dragged on unchecked.

It is the high incidence of road accidents prevalent on Zambian roads today and the many lives lost in consequence thereof, that have prompted us to address ourselves to the discussion of the Law and practice relating to roads and road traffic as contained in Chapter 766 of the Laws of Zambia, and enforceability of the same.

Our primary and chief concern in this whole exercise would be to analytically examine the law of the roads and road traffic on its general plane as it stands to date. This shall be done in the first chapter of this paper. The fact that there are presently numerous cases of road traffic accidents in the country is a clear testimony of traffic law violation, apparently all out of proportion, irrespective of what factors are at play. Hence we are moved to consider what the various provisions of the law, viz Cap 766, state about certain practices regarded as traffic offences or, what amounts to the same thing, violations of the Highway Code and, in the same vein, examine the nature of the prescribed penalty/ies for

certain offences that will be deliberately picked out and cited as illustrative instances. Having done this, we then hope to invoke the practical realities confronting the law in this regard thus see whether or not it is in keeping with the current pace of change in socio-economic, cultural and technological development of the Zambian society.

Further, we shall endeavour to scrutinise the legal machinery available for the enforcement of the roads and road traffic law. This in part will constitute Chapter two of the present paper, in which chapter we intend to look at the Traffic Police of the Zambia Police Force. The whole purpose in this part of the exercise will be to try to show the effectiveness, or ineffectiveness, of the particular methods employed by the police in detecting road traffic offences so as to ensure strict compliance with the Law at all times by all those subject to it. In compendium, therefore, we wish to demonstrate the practical relevance of the roads and road traffic law in its present context, and how the police are coping with the task of enforcing this law.

Lastly, our next area of survey in this discourse should involve a bit of reflections on the Roads and Road Traffic Board (under the Ministry of Power, Transport and Communication), as one of the roads and road traffic law enforcement agencies, infact the vanguard agency in this respect. Here the whole idea is to see how the Board influences the law and practice of roads and road traffic. And also an appreciation of the constraints frustrating the realisation of the Board's work will be made. This part will of itself form the third chapter.

At the end of the day we hope to bring out the strengths and weaknesses in the law on roads and road traffic, as well evince the impediments that exist to its full and fervent realisation. The concluding tone should necessarily carry the present authour's views as to how the law ought to be. This then is the final and closing part of the paper: the fourth

chapter.

THE ROADS AND ROAD TRAFFIC LAWS IN ZAMBIA: DETERRENT, CAUSE OR CONTRIBUTOR TO THE ROAD CARNAGE IN ZAMBIA?

INTRODUCTION

Perhaps one thing that needs to be made clear right from the outset, thus receiving first priority, is the aim and objective of this study. This study is an appraisal of the existing legislation on roads and road traffic practice in Zambia and an appreciation of the efficacy of the legal mechanics of enforcement of the road traffic law. A question could possibly be posed: why should parliament take it upon itself to enact a law on road traffic in Zambia - how necessary or important is this law? The search and desire for a system of road safety makes imperative the need for the law to regulate road traffic. One would logically conclude, therefore, that the want of road safety is an expression of the danger that exists on the roads to one's life and limb; traffic hazards that are usually manifested in road accidents engendering both manpower and economic loss. Hence 'road accidents' must be regarded as the main mischief which the legislature tries to put an end to in enacting the law on road traffic through the prescription of various instructive measures of road safety. But to attain this objective the legislators are not alone, they are aided by the law enforcement agencies viz., the Police and the Courts of Law who see to it that instructions and intentions of the legislature are carried out to their logical conclusion by all those placed under legal obligation to observe the law.

In Zambia there exists the particular legislation on roads and road traffic, namely, the Roads and Road Traffic Act, Cap 766 of the Laws of Zambia. However, the high incidence of road accidents on Zambian roads of late has come as a major source of worry and concern

to both the public authorities and the general public. The escalating death rates ensuing from road accidents are so appalling as to raise questions of what has really gone wrong with our traffic law and the Highway Code. Thus the current high incidence of road accidents and incidental road traffic law violations could be suggestive of the monstrous rigidity of, rather inflexibility in the law, which law fails to attune itself to changed modern road traffic environment. Consequently, the people find it too difficult to practically do certain things in strict compliance with the arduous demands of the law. Alternatively, the law in its present oracles could be interpreted as being too lax to be effective, thus giving vent to rampant criminal activities or lawlessness through arrogant and deliberate disregard for the law, which, in any case, is largely due to the failure by the law enforcement agencies, notably the police, to reach out for culprits and let the law take its own course.

It is largely submitted that any law affecting roads and road traffic operations must necessarily have its legislative prescriptions for motorists and other road users based on effective causes of road accidents and the intricacies of the prevailing traffic environment in any one particular society. Hence as Professor Cohen (1) rightly points out, road accidents may be said to occur when men-vehicles do not meet the safety requirements of the traffic situation. If so, Prof. Cohen contends further, the starting point in attempting to prevent accidents should be to understand what is required of the man-vehicle. Nor is it enough for a programme of prevention only to be concerned with the immediate or precipitating factors that can be discovered when the accident has occurred. Indeed accident liability does not begin and end with a particular driver, so that a car designer who

(1) J. Cohen & B. Preston, Causes and Prevention of Road Accidents, (London: Faber and Faber Ltd., 1968) pp.18,19.

N.B. Prof. Cohen was at the time of writing as co-author of the above edition, a Professor of Psychology at University of Manchester in the U.K.

has placed in the hands of a driver a vehicle unfit to cope with traffic , or a road or lighting engineer who has neglected to ensure that the road surface or intensity of illumination is suitable, shares responsibility with the unfortunate individual who is involved in a collision.

On the other hand, to many people accidents are fortuitous events occurring in a random fashion entirely by chance, to be classed with acts of God and other misfortunes. However, as more has become known about accidents and their causation, the elements of chance and randomness have diminished under the impact of more precise statistical assessments of what actually occurs and have now given way to the equally extreme belief that all accidents do not just happen but are caused by conscious and unconscious factors potentially under the control of the individual.

Some researchers have discovered certain tendencies in road accidents - causation which are of great value in assisting in the formulation of rational policies for dealing with the road accident problem. There can be no doubt that some general trends in road accident fatalities and casualties can be discovered even apart from the obvious one that their numbers are increasing. For example, Professor Smeed(2) lists the following categories:

- (i) There is a general tendency for road fatalities per registered motor vehicle to decrease as motorization (motor vehicles per person) increases.
- (ii) There is a general tendency for road fatalities per head of population to increase as motorization increases.
- (iii) Despite the very large differences in traffic conditions in different countries, the number of road fatalities in a given country can, to a large extent, be predicted from a

(2) Foreword by Prof. R.J. Smeed, in F.A. Whitlock, Death on the Road - A Study in Social Violence (London: Tavistock Publications Ltd., 1971), p.xi.

N.B. Prof. Smeed is writing in his official chair as Prof. of Traffic Studies, University College, London.

knowledge of the population and the number of motor vehicles only.

(iv) The number of pedestrian fatalities in a country is largely determined by its population and is not very dependent on its degree of motorization.

(v) As motorization increases there is a tendency for injuries to occupants of motor vehicles to increase in number relative to injuries to pedestrians.

(vi) There is a general tendency for road-user behaviour to improve as motorization increases.

Public Attitude Toward Road Accidents

Why, it may be asked, is the outlook for road safety in Zambia so bleak and gloomy?

The answer to this question could perhaps be solicited through a well-considered examination of the two clues hereafter proposed. First, we lack sufficient collective will to put an end, once and for all, to the scourge of the roads; second, our 'understanding' of the situation, probably so just because of its fragmentary character, may be, to a large extent, spurious. This then is the whole case of the general deep-rooted apathy of the Zambian people to the causes and consequences of road accidents.

Needless to say, if we had the will as a people, we should definitely find the way, for we cannot assume that the problems of road safety are beyond the wit of man to solve, once they have been identified. We do not have the will because we are not sufficiently moved by disaster on the road. It is a strange fact of life that the public conscience seems more outraged by the discovery of a child stabbed to death and left to rot in the bush than by a count of 8,000 corpses on the road in a period of twelve months. Hence, death for death, murder has a far sharper impact than a fatal accident; there is drama in the former but not in the latter. A fatality on the road is prosaic and unpleasant to think about, and the less said

about it the better. Its effects on the public imagination are not cumulative as the fact of 8,000 road deaths do not affect us twice as much as 4,000 road deaths.(3)

In compendium, therefore, road deaths and injury rates have astonishingly little impact on the general population. For the most part a new record (i.e. any reported incident of road traffic accident) receives brief notice in the press; the majority of readers, after expressing perfunctory concern, remain indifferent or apathetic. Not until a friend or relative is killed on the road do we begin to be dismayed by this daily carnage. This public apathy over what amounts to an international disaster of considerable magnitude has been lucidly drawn by one writer(4) in a rather paradoxical tone to the effect that horror fascinates rather than act as a deterrent to rising road-accident rates.

In principle the number of casualties on the road could be reduced to any required level, provided there was a sufficient investment of economic and social effort. The number of deaths and mutilations we tolerate on our public highways is a measure of the value we place on human life and limb.

(3) Cohen, J., op.cit.,p.104.

(4) T.T. Doherty, "Facts Versus Emotion in Traffic Safety." Medical Science Law 5, pp. 147-50.

CHAPTER ONE

THE ROADS AND ROAD TRAFFIC LEGISLATION

In Zambia all matters pertaining to the domain of roads and road traffic law are governed and regulated by the Roads and Road Traffic Act, Cap 766 of the Laws of Zambia. This Act has been developed from the 1965 edition of the Roads and Road Traffic Act, Cap 173, through insertion of new and amendment provisions. The primary purpose of Cap 766 is well enunciated in the objects clause of the Act which reads as follows:

An act to make provision for the care, maintenance and construction of roads in Zambia, for the control of motor traffic, for the licensing of drivers and motor vehicles, for the compulsory third party insurance of motor vehicles, for the licensing and control of public service vehicles and public services, and for other miscellaneous provisions relating to roads and motor traffic.

(i) The State of Public Highways

In order to effect the aforementioned objects of the Act the legislature has provided for specific statutory organs charged with the administration of the provisions of the roads and road traffic law. Such are the organs as the Highway Authorities, Roads and Road Traffic Boards, Road Traffic Commission, and the Zambia Police Road Traffic Inspectorate.

Section 2 (Interpretation) of Part I (Preliminary) of Cap 766 defines "highway authority" as meaning the authority responsible for the construction, care or class of road in accordance with the provisions of this Act.

Section 31(1) of the Act places a mandatory duty on every highway authority subject to the directions of the minister, to undertake the construction, care and maintenance of such roads or classes of roads within such area or areas as may be involved in the jurisdiction conferred upon it in accordance with the provisions of the Act.

Hence in cities and towns around the country urban and district municipal councils constitute highway authorities in the respective local areas. These highway authorities must always ensure that the roads are well repaired or reconstructed, traffic signs fixed in appropriate places and traffic lights (robot-lights) maintained in working condition. Anything other than this will greatly inconvenience, let alone jeopardise the position of traffic on the road. This can result in loss of human life and limb as well as property. Traffic as used herein (in the context of the Act) denotes vehicles, pedestrians, processions and bodies of troops, and all animals being ridden, driven or led both across and along the roads or public highways. Where, therefore, there is partial or total neglect in the care maintenance and construction of roads on the part of highway authorities, which neglect causes injury to or loss of traffic the aggrieved party has the right in the circumstances to invoke the roads and road traffic Act Cap 766 to find the constituted highway authority liable and claim compensation for the damage so sustained. Section 32 provides for liability of highway authorities and their staff, whence sub-section (2) states thus:

Provided that the liability of a highway authority under any other law in respect of any injury, damage or loss which may accrue to any person or property through the failure of any road, ferry or pontoon to sustain any vehicle shall be limited to liability for physical damage to such person or property caused by such failure.

It is ironical to note that despite the tacit stipulation of the foregoing provision, most public highways in the country are so damaged as to be untraversable. Roads are everywhere full of potholes to the extent that it has become conventionally acceptable to include a pothole in the description of any road in Zambia. Either roads have not been mended or patched up, resurfaced or reconstructed for a couple of decades now culminating into abysmal potholes, or the whole stretch of a road gets washed away by rain floods leaving behind a dusty, gravel

road. This exceedingly poor state of roads in most parts of Zambia has on several occasions boosted road accidents and caused considerable damage to vehicles. Yet very few, if any, motorists and other road users who suffer injury occasioned by the derelict state of public highways ever get to sue the concerned highway authorities pursuant to Section ³²(2) of Cap 766. This in turn has led to gross inertia and lack of accountability by the highway authorities who appear to be actively capitalising on people's apparent ignorance of their rights under Section 32 (2) of the said Act.

To take a practical example of what has been said above, it was reported in the Times of Zambia of February 11, 1991, that three people died on the spot when a Zambia Railways goods train rammed into a foreign truck from Zaire near Chingola Road cemetery rail-road crossing in Kitwe. The driver of the truck, a woman passenger and her baby died on the spot while the locomotive driver escaped unhurt⁽¹⁾. In the following month of March, following the cited incident, the Zambia Railways authorities announced in the press, rather regrettably, that the traffic signs installed at the Chingola Road cemetery rail-road crossing, the scene of the reported accident, were among the several other listed traffic signs at similar rail road crossings found mechanically defective and therefore unreliable.

It goes without saying that the intention of Parliament in placing a mandatory duty upon highway (traffic) authorities to care, maintain and construct roads, including the duty to affix traffic signs in pursuance of Section 25 of Roads and Road Traffic Act, was to provide for a way or system of constantly and ubiquitously observing those duties so as to increase at all times the safety of traffic on the roads. Certainly it was not the intention of the legislators to have such statutory duties observed in partiality only when and where a

(1) "3 die as Train hits truck", Times of Zambia, Monday, February 11, 1991, p.1.

traffic accident occurred and long after the mischief sought to be curtailed by Parliament has been occasioned. Such a response of the highway authorities to their statutory duties, as exemplified by Zambia Railways and the Kitwe Urban District Council in the reported accident (*supra*), is but a negation of the very intentions of Parliament expressed in the Roads and Road Traffic Act, Cap 766.

(ii) Circumstantial Road Traffic Condition

The Roads and Road Traffic Act addresses, *inter alia*, the physical or mechanical construct of a vehicle and the general behaviour of traffic both in position of rest and motion on public highways.

For instance, S. 223(1) is to the effect that no person shall use on any road any vehicle which does not comply with any regulations, applicable to the class or description of vehicles to which such vehicle belongs, relating to the construction, equipment and use thereof. (2) Any person who uses any vehicle, or causes or permits any vehicle to be used, on any road in contravention of the provisions of subsection (1) shall be guilty of an offence.

It is common knowledge that some motorists in Zambia have substantially modified their vehicles to suit the specific purpose of their intent. In cities like Lusaka, where the scarcity of public commuter transport is much more pronounced, it is not uncommon to find private vans, lorries and trucks of all descriptions busy ferrying passengers from one point of the city to another, especially in the evenings and at night when such plying can go undetected by traffic police. The people involved in such illegal plying have come to earn themselves a notorious name of "pirates". They charge on-board exorbitant fares and are mostly rude to their passengers. Moreover, their vehicles are not designed or intended for public transport so much so that passengers of such vehicles get ruffled up in due course,

lacking even the minimum comfort at any rate. This is an unbecoming trend in road traffic practice in Zambia which has contributed greatly to the current high incidence of road carnage in this country. For instance, the Times of Zambia of March 26, 1991, carried a report that a fatal accident occurred in Solwezi where a man fell from a moving truck. The report stated that the man fell from a Fuso truck and died on the spot (2). And in another similar incident in Eastern Province, reported in 1990, scores of travellers perched on the maize bags hauled by haulage truckers perished *tout ensemble* when the truck and trailer on whose cargo the victims were so perilously perched overturned on the road.

The foregoing are of course road traffic practices contra Section 231 of the Roads and Road Traffic Act, Cap 766. Sub-section (1) of the said section provides that No person shall permit any person to ride, and no person shall ride, on the wings, fenders, luggage grid, roof...bonnet of a motor vehicle or trailer on any road except for purposes incidental to and necessary for the repair of the vehicle or trailer. Further, sub-section (3) reinforces the provisions of sub-section(1) when it declares that No person shall ride or be permitted to ride on any load in a goods vehicle, unless there is sufficient protection as may be prescribed to the vehicle. And finally, sub-section (5) proclaims that any person failing to comply with the provisions of this section shall be guilty of an offence.

It is indeed flabbergasting to note that inspite of what the law clearly stipulates practical reality is to the contrary. One wonders what then could be the essence of such law if the same cannot be applied effectively to curb the illegalities of which it is intended.

It is hereby submitted that the perpetration or proliferation of road traffic offences by some road users is partly attributable to the laxity inherent in the law which consequently

(2)"3 die on roads", *Times of Zambia*, Tuesday, March 26, 1991, p.3.

*Report actually vindicated by Police Public Relations Officer, Mr. Batholomew Jere, at Force Hq in Lusaka.

fails to make its impact felt by all would-be road traffic offenders and convicted traffic law violators. This is well borne out by the fact that Section 231(5), for instance, does not expressly state the nature of offence committed for non-compliance with S231 apart from saying that one shall be guilty of an offence. Furthermore, no clear cut penalty is thereby prescribed. The obvious result of such law is that it is not deterrent enough to keep would be violators of such law constantly aware of the negative repercussions of disobeying such law. In most cases people simply choose to deliberately disregard the law, knowing they will easily get away with it or that they can quite easily rebuff, or better still, walk down on pending sanctions.

Another anomaly reflected in the above section, namely, S.231(2), lends disenchantment to the law. Sub-section (2) states that no person other than the driver/owner or hirer of a goods vehicle shall permit any person to ride, and no person shall ride, on any such goods vehicle. But paragraphs (ii) and (v) respectively, are introduced therein as exceptions to S.231(2), thus, provided that the provisions of this sub-section shall not apply in any case where:

(ii) the person riding on such goods vehicle is the owner or hirer thereof or member of the family of such owner or hirer; or

(v) the road upon which such goods vehicle is being used is not served by a motor omnibus service.

The fallacy of reasoning behind the above proviso, as contained in S.231(2)(ii) or (v), is that what act in the circumstances is unlawful and potentially dangerous to the person of one person and proscribed as such by law, the same act done under like conditions or circumstances can never be any safer and lawful and as such sanctioned by law merely because such an act is perpetrated by another person, which other person stands in family

and/or contractual relationship with the owner of the object through the agency or means of which the act in question is committed. Surely in matters of roads and road traffic law exceptions such as those shown above do not hold good in that we are here ¹taking road safety vis-a-vis traffic, and the rules of road safety must of necessity apply indiscriminately to all classes of road users. Needless to say, however, if, as in the practical case earlier cited, the cousin of the Fuso truck driver had been allowed to ride on the said truck or the uncle of the haulage trucker had been among the poor Eastern travellers perched on the top of maize bags, being the cargo or load of the haulage truck, in any case both relatives of the respective truck-drivers could have met with the same fate. Where and when the accident occurs and death ensues it is irrespective of family relationships between the victims and drivers or owners of vehicles involved in any given road accident. Hence the law must seek to protect all classes of individuals in situations such as this since by making exceptions such as those above-shown the same law encourages one class of society so excepted to engage (of course with impunity) in the very acts it condemns as unsafe and illegal where and when done by other persons. Ultimately the same acts will boomerang to affect those excepted by law so much so that those people will in effect be without protection of the law. The law will have failed in its duties and such a state of affairs demonstrates substantial injustice caused to the excepted class in paragraph (ii) of sub-section 2 of section 231.

Similarly, Section 231(2),(v) is equally nugatory and is a negation of the very essence of the Act, namely, the fostering of road traffic safety. To say that people living in areas which are poorly, or not at all, served by public transport bus service should whenever they desire to travel seek out goods vehicles and get themselves piled on top of cargo or on the fenders of such vehicles at their own risk is tantamount to signing a death warrant and line up the victims for the gallows, especially that para.(v) contemplates people in communities

so placed or situated as to have no better alternative to public transport than the very goods vehicles. Little wonder then rural areas take lead in recorded incidents of road traffic fatalities involving passengers of goods vehicles. Such passengers are definitely illegal as goods vehicles are not licensed to transport nor constructed or designed to carry members of the general public as such passengers. The law falters in this regard!

(iii) Motor Vehicle Drivers and Traffic Offences

The number of motor vehicles currently doing rounds on Zambian roads has more than trebled as compared to what it was two decades ago. In cities like Lusaka one would be right to postulate that in every five people one has a car. This increased rate of motorization poses great ecological danger to our environment and compounds even more the problem of road traffic regulation. At the rate we are going the existing facilities for road traffic control prove too inadequate and archaic to combat effectively problems of modern traffic. Accordingly more and more road accident injuries, fatalities and property destruction take place every day on our roads. This ominous trend in our traffic situation appears to confirm the hypothesis that there is a general tendency for road fatalities per head of population to increase as motorisation increases.⁽³⁾

In the light of the foregoing the Roads and Road Traffic Act contains certain provisions aimed at checking the excesses of motor vehicle drivers on the roads as well as disciplin: recalcitrant road traffic law violators by way of legal sanctions ranging from fines to custodial sentence. A few examples hereunder go to illustrate the point expressed above.

(3) Cf. Prof. R.J. Smeed's Foreword; in *Death on the Road - A Study in Social Violence*, (1971), p.xi.

Section 192 provides for speed limits. Sub-section (3) reads:

Any person who drives a vehicle of any class or description on any road or portion thereof, at a speed greater than that prescribed or specified under the foregoing provisions of this section as the maximum speed for such class or description of vehicle on such road or portion thereof shall be guilty of an offence and shall be liable, in the case of a first offender, to a fine not exceeding fifty kwacha, and in the case of a second or subsequent conviction, to a fine not exceeding one hundred kwacha.

The first thing that crosses one's mind with regard to the proviso hereabove reproduced is the degree of punishment for the offence. Under the circumstances the penalty for exceeding the prescribed speed limit is fifty kwacha at the most for a first offender, and no more than one hundred kwacha for subsequent convictions. Ideally the fine imposed is too insufficient in the circumstances and does not reflect the seriousness of the offence. Indeed the very mediocrity of the penalty makes a mockery of the law. The penalty is therefore neither deterrent nor reformatory, rather it is redundant and in dire need of revision. Whereas a fine of fifty kwacha would have been highly demanding on the financial resources of a traffic offender two decades ago, i.e. in the 1970s, the same is no longer true at the present time (1991) when the national currency has been so much devalued as to render fifty kwacha of practically no value. Equally a fine of a hundred kwacha is of no consequence.

The same weakness seen in the law's grip on traffic law offenders portrayed by Section 192(3) is extended with marching resilience to other situations. For instance, Section 195(1) proscribes careless driving and sets the penalty in sub-section (1) to a fine upon conviction of no more than fifty kwacha for a first offender and no more than a hundred kwacha for subsequent convictions.

The time of the penalty changes suddenly in a leap-frog fashion in Section 196(1), for the offence of reckless or dangerous driving, carrying a fine of no more than a thousand kwacha, or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment. Note, however, that in Section 199(1), for the offence of causing death by reckless or dangerous driving of motor vehicles, the penalty set upon conviction is in this case precisely the same as the one obtaining in the case under Section 196(1). This failure (by the legislators) to make a distinction between the two offences to accord with differing degrees of gravity is also a diminution of the apparent intensity of the latter offence, that is, causing death by reckless or dangerous driving, which in any case makes the difference, i.e. separation of the two offences somehow less discernible, blurred and superfluous. Be that as it may, it cannot here be denied that such a difference exists in reality. Whereas in the first instance depicted in Section 196(1), viz., reckless or dangerous driving, no death ensues, in the second instance under Section 199(1), viz., causing death by reckless or dangerous driving of motor vehicle, there is actual loss of life attributable in part or *in toto* to the offender upon conviction. The difference is simply too conspicuous to be casually ignored.

Practical cases invoking the provisions of the Act such as the ones highlighted in the foregoing paragraph are abundantly available on record. In one such instance a driver with Gwembe Development Company, Mr. Petro Lupenga, was fined fifty kwacha or in default two weeks simple imprisonment by a High Court judge for careless driving. Mr. Justice Kabaso Chanda (a Lusaka judge, sitting in Livingstone) had the case substituted from one of causing death by dangerous driving during the course of the trial.(4)

In yet another instance, police in Mongu charged a man with causing death by

(4) "Careless Driver Fined K50", *Times of Zambia*, Wednesday, January 9, 1991, p. 7.

dangerous driving after discovering that the man was driving a lorry/truck as unlicensed driver following which two men died on the spot when the same truck in which they were travelling (with four others as passengers) careered off the Mongu-Lusaka road and overturned.(5)

Finally, in the third recorded instance the case raises a number of issues concerning matters of roads and road traffic law and one cannot help but speculate about them. In that case a ZCCM division driver Mr. John Kayombo died on the spot after a heavy truck he was driving overturned on the Kitwe-Chingola road. It was said by eye witnesses that the accident happened after Mr. John Kayombo applied emergency brakes to avoid hitting into a PTC van which had joined the road without giving way.(6)

In the case above it is said that the driver of a PTC van had joined the road without giving way*, and this was the main or originating cause of the accident leading to the death of Mr. Kayombo. Such behaviour on the part of the PTC van driver runs counter to Section 208(1), (a), (b) of the Roads and Road Traffic Act, which states categorically that all traffic signs and signals must be obeyed without fail. On the other hand the resultant effect of the PTC van driver earns the said driver an offence of causing death by reckless or dangerous driving of a motor vehicle contra Section 199(1) of Cap 766. Three possible explanations may outrightly be advanced for the PTC driver's irresponsible and fatal behaviour on the road.

< 1 > Either the PTC driver was absolutely ignorant of the road traffic regulations applicable in the circumstances; or

(5) "Road crash claims 2 lives" *ibid*, Thursday, January 10, 1991, p.7.

(6) "Driver dies in Mishap", *ibid*, at p.2.

* *Emphasis added, not in the original.*

<2> there was no traffic sign at the junction because either it had fallen off the street, or it had been obliterated, or had faded away; but the local highway authorities charged with road safety matters had persistently displayed dereliction of duty; or

<3> the PTC driver was so careless and grossly negligent as to, wilfully and knowingly, refuse to observe the Traffic sign (assuming it was in place), thereby deliberately overlooking or disregarding the road traffic regulation requiring him to stop at the junction and give way to the in-coming traffic.

Further than the three categories outlined above one may add here that it is also possible that the PTC van might have been mechanically defective. That is to say, may be the van had no reliable braking system which could allow the driver to halt the vehicle at the junction to the extent that the driver of the said van felt obliged, no less compelled, to take chances to join the road immediately. But in so doing, the PTC driver appeared to have miscalculated the relative velocity of the approaching ZCCM truck in relation to his own position, so much so that he grossly overestimated the distance between the two bodies resulting in a serious error of judgement. He was no doubt totally blameworthy in the circumstances.

Finally, speed limit could have been another traffic regulation not seriously taken into account by the PTC driver at the material time. By this means the PTC driver might have been driving at an excessive speed and, failing to reduce on speed to a reasonable manageable limit, it became quite difficult to stop the car at the junction, nor could he apply emergency brakes without putting his own life in jeopardy. So in the fashion of a dare-devil, he rushed in to join the road, albeit hoping, rather foolishly, to outpace the in-coming ZCCM truck, only to discover to his dismay it could not work that smoothly. All the same

he managed to drive-off unhurt. He got away with it and faithfully paid tribute to his driving experience. He consequently felt rewarded for his daring nerve, and as far as he was concerned, he had broken no law. The PTC driver henceforth looks forward to an even more exciting "dare-devil" highway run. The police should move in and do everything possible to bring all such road traffic offenders to book and prosecute the culprits in accordance with the existing law. Otherwise road traffic safety shall remain a remote possibility and pipe dream only if people of the character of the PTC driver are left at large to boost road carnage on our roads.

CHAPTER TWO

HIGHWAY LAW AND THE POLICE

(i) The Education and Training of Police Personnel in Matters of Roads and Road Traffic Law.

The need for a well-coordinated, efficient system of educating and training traffic officers in the police forces is not only great but also one of vital importance. Its importance cannot therefore be overemphasised in view of the axiomatic principle of law and practice that the successful or effective enforcement of any law will to a larger extent depend on how knowledgeable and well-vested the law enforcement agents prove to be in any particular law. Hence even in the present case the police should be thoroughly apprised of the full contents of the Road and Road Traffic law if they are to effectively enforce the law, otherwise the objectives of the Act would be hard to realise and its whole purpose completely defeated.

In Zambia the current practice⁽¹⁾ in the education and training of police officers on matters of road traffic law is that initially officers are transferred from general duties to traffic duties where they do some kind of job-on-training. After a lapse of six months they are sent for specialised training in traffic course at Lilayi and Kamfinsa Police Training Schools in Lusaka and Kitwe respectively. The latter training covers all road traffic offences as prescribed under the Act, Cap 766 of the Laws of Zambia. Other courses studied include the following: (i) Corruption Act, (ii) First Aid, (iii) Traffic Investigations, (iv) Traffic Prevention and Control Management, (v) Public Relations, and (vi) Road Safety education, et cetera.

(1) All relevant information on Police education and training programmes in roads and road traffic law as herein given was obtained from the Traffic Section of the Police Force Headquarters, courtesy of Mr. L.S.S. Mudenda (Assistant Superintendent), Staff Officer Traffic Section, with whom the present author conducted an interview at Force Hq on 22nd March, 1991.

The second phase involves advanced senior traffic officers' course conducted either locally or abroad. These officers upon successful completion of the course come to work as Divisional Traffic Officers. Since there are ten such divisions for the entire country it means that the advanced senior traffic officers course has an in-take capacity of only ten officers in a roll.

(ii) Mechanisms of Detecting Road Traffic Offences.

When a road traffic accident occurs the police arrive on the scene and interview the driver of any vehicle involved in the accident. Where there are any casualties these will be immediately taken away from the accident spot and rushed to hospital. After careful and considered scrutiny of the situation and circumstances of the particular accident the police will finally charge the driver with a road traffic offence appropriate in the circumstances.

Ordinarily, however, the police employ three main methods of detecting traffic law offenders. These are: a) spot checks; b) proper road blocks; and c) highway (trunk road) patrols.

1. Spot Checks. This method is mainly for detecting faulty vehicles by checking out for certificate of fitness licences, third party motor insurance policies, etc. and can be mounted anywhere along the highway.

2. Proper Road Blocks. These are not only set up by traffic personnel but also by the Army, the Police and Traffic Police, the National Service, Air Force, Customs and Excise and the Roads and Road Traffic Board.

The police will mount such road blocks to check only police vehicles and vehicles in general for purposes of retrieving stolen vehicles and apprehending wanted suspects.

Traffic personnel will set up the same road blocks to ensnare road traffic law violators for all traffic offences.

The rest are very exclusive. For instance the army will set up road blocks to inspect only motors belonging to the army. Similarly, the ZAF road block will be inspection of ZAF vehicles, and the Zambia national service road block will be concerned with ZNS vehicles only. On the other hand, the customs and excise department will have such a road block for scrutinizing all foreign vehicles brought into the country illegally.

A combined proper road block is also staged sometimes involving a combination of two or more of the security forces and/or traffic departments enumerated above, but this is done only when there is a specific objective in sight sought, or intended to be achieved.

3. Highway (Trunk Road) Patrols. This method is employed by the Traffic department of the Zambia Police alone. The patrols are carried out with a view to detecting drunken drivers, vehicles left abandoned on the roads, vehicles carrying abnormal loads in excess of stipulated maximum tonnage and all such vehicles constituting obstructions to normal road traffic. In all these and similar other situations incumbent drivers or owners of the vehicles are accordingly charged by the police if and when necessary to do so. Police may also merely warn drivers who are found drinking while driving, remove passengers found overloaded in any vehicle, remove passengers heaped on top of cargo and charge both the driver and passengers thereof. Lastly, the patrols are also pursued to catch would-be drunken drivers to avert their causing unnecessary road accidents.

3.1. Speed Radar. This mechanical device is used by the police in the course of their highway patrols to ascertain with maximum accuracy any excess of speed limits. This method is used in the following manner. Six policemen are stationed at one point of the road, three

on one side of the road with a speed radar and across the road on another side, three policemen are in waiting with walkie-talkie radios. A radar string stretches across the road from the point of rest of the speed^{radar} reaching out to where the other three policemen with radio communication are. The three policemen across the road take readings of the registered speed of any vehicle per hour given by the speed radar whenever a vehicle passes by crossing the radar string. Immediately the three policemen with walkie-talkie radios call upon the second police check point in attendance some two and half (2 1/2) kilometres apart. They radio to this second police checkpoint the running speed/hour and registration number of the approaching car as registered by the speed radar. The six policemen manning the speed radar from either side of the road are not exposed to the in-coming traffic. This is the secret of success of this method; to catch traffic offenders unawares.

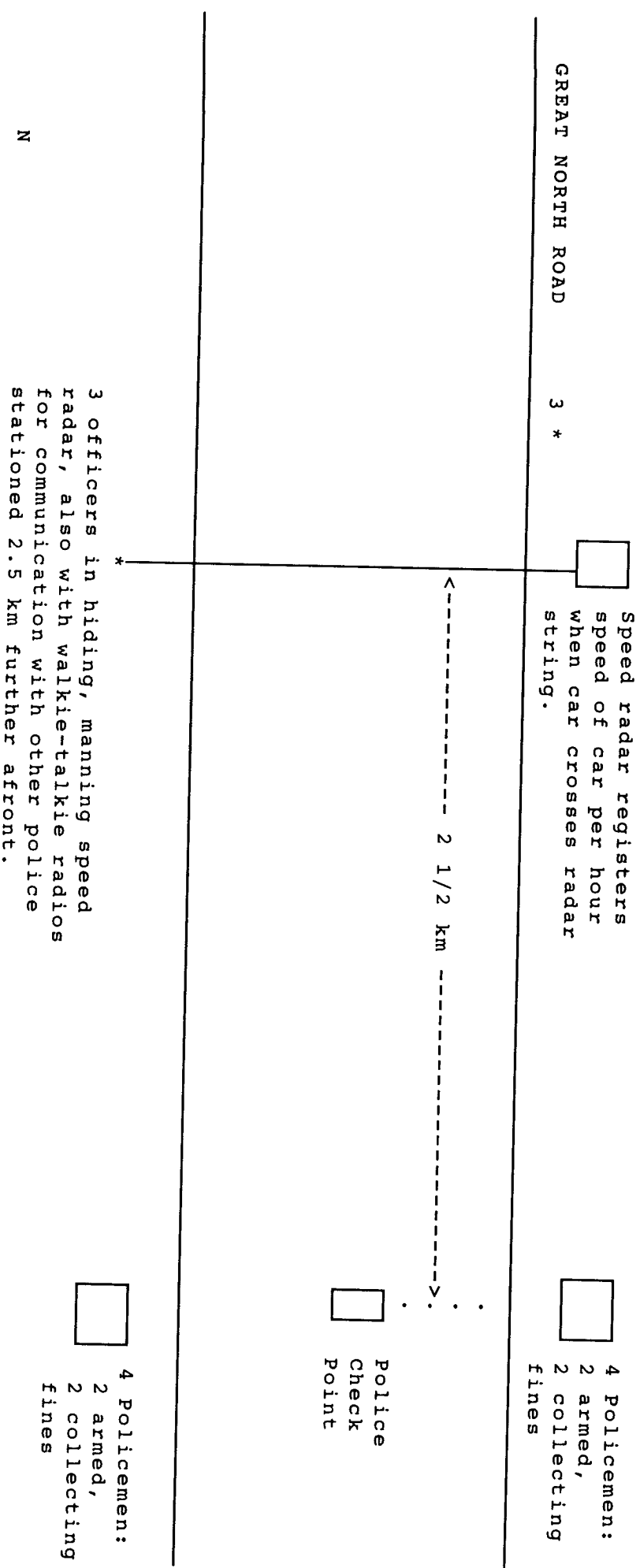
At the second check point there are eight police officers, four on either side of the road and are armed and also with walkie-talkie radios. On either side two only are armed and the other two are meant to collect fines from charged traffic offenders right on the spot. Here they stop the car by way of a police check point sign on the centre of the road and inform the driver that he has exceeded the speed limit by so and so km per hour and read the revelant charge to him and fine him accordingly.

The page following is a diagrammatic illustration of the above mechanism.

3.2 Speed/Radar/Camera/Computer

This device is mounted on the roof of the police vehicle doing highway patrol routines. When the police vehicle is trailing behind another vehicle belonging to a traffic offender, the device takes photographs of the driver of the vehicle in front and all its passengers and takes note of the registration number, records the running speed per hour of the vehicle and its colour and/or special marks and all this information is automatically processed and stored in

SPEED RADAR MECHANISM FOR DETECTION OF EXCESSES OF SPEED LIMITS.



the computer system of the device which then can be reproduced anytime and in court for the prosecution relying on it as admissible evidence. One such device costs K3 million.

Our police force have not yet been able to acquire these devices from Western Europe. However, the Assistant Superintendent Officer-in-Charge of staff for traffic at Force Headquarters, Mr. Mudenda, unveiled to the present author during the interview that there are firm plans currently to purchase the devices for use by the traffic police as such devices guarantee effective control of road traffic law violations much more than any other method or device in use in the country at the present time. The Police Force requires ten such devices for the ten Divisions around the country at a total cost of K30 million. The figure sounds scarily astronomical, but it is worth it! Infact this is nothing compared to the total loss in human and property value incurred every year by the nation as a result of the uncontrolled road traffic accidents. By bringing in these traffic devices the nation will be saving three times more what it spent on acquiring the devices. Moreover, the greater the figure the Zambian government is prepared to reserve for this project the greater the value the government places on human limb and life, without which even economic development cannot be fully realised.

(iii) Incidence of Road Traffic Law Violations

Country-Wide Statistical Data for the Years 1989 and 1990.(2)

The figures following hereunder signify the nature and extent of the problem of road carnage in Zambia. That is to say, the statistics given are a manifestation of the high incidence

(2) Road accident Statistics (1989 and 1990) obtained from the Traffic Section, Force Hq., Lusaka, courtesy of Mr. Mudenda, L.S.S. (Assistant Superintendent for Staff-Traffic).

of traffic law violation in our society which calls for tighter enforcement of the law to curb the scourge.

1989	1990
Accidents.....1026210300
Persons Killed..... 810	(Minus 7 stations) 939
Seriously Injured..... 2998 3412
Slightly Injured..... 1723 1788
Total Casualties..... 5531 6139
1989	
Total Offences Prosecuted.....	53061
Successfully Prosecuted (convicted).....	50688
Acquittals.....	1136
Pending Cases.....	1503
Total Offences Prosecuted.....	158279
1990	
Successfully Prosecuted (convicted).....	154962
Acquittals.....	963
Pending Cases.....	2354

From the above figures a cursory perusal indicates one salient feature: the figures for road fatalities for 1990 kept increasing instead of decreasing. This registers a sharp decline in traffic law compliance by road users and reflects mounting laxity on the part of law enforcement agents, namely, the traffic police, in their duties to ensure maximum public compliance with the law. In 1989 traffic law offenders who were successfully prosecuted and convicted by courts of law throughout the country numbered 50688 and in 1990 the

figure rose to 154962 out of 158279 cases with a mere 963 acquittals. Of course this was a commendable job on the part of the traffic police. The one unseating feature about the whole situation presented in the statistical data is the higher figures for the total number of cases for traffic law offences in both 1989 and 1990, especially in the latter year. This is a dangerous trend and it is also something that shows the majority of people using public roads are not given adequate education and propaganda information by the road traffic departments to constantly remind them about the highway code and the road traffic regulations. This is needed for our everyday survival -such information or propaganda is a vital condition of our life, especially in the age of increased motorization, and road safety cannot be taken for granted any more.

CHAPTER THREE**THE ROADS AND ROAD TRAFFIC BOARD - RAISON D'ETRE.**

The Roads and Road Traffic Board was established by an ACT of Parliament, namely, the Roads and Road Traffic (Amendment) Act, No. 35 of 1974, read with the Roads and Road Traffic Act Cap 766 of the Laws of Zambia (herein referred to as the Principal Act).

Under the provisions of Section 3A of Part 1A of the Roads and Road Traffic (Amendment) Act, 1974, there is hereby constituted the Roads and Road Traffic Board which, henceforth, shall deal with all matters relating to roads and road traffic in the Republic.

(i) Composition of the Board

Section 4A of the Amendment Act deals with the composition of the Board.

Subsection (1) of the proviso reads thus: The Board shall consist of -

- (a) The Minister as Chairman, the Secretary to the Cabinet, and the Permanent Secretary of the Ministry of Power, Transport and Works, all of whom shall be permanent members; and
- (b) Such other members being not less than three nor more than seven as may be appointed by the Minister from the following:
 - (i) One member from the medical profession;
 - (ii) One member from the legal profession;
 - (iii) One member from the motor trade industry;
 - (iv) One member from the Zambia Police Force;
 - (v) One town engineer nominated by the Minister responsible for local government and housing;

- (vi) Two members of the general public who have had experience of, and shown capacity in dealing with, matters relating to road traffic and road safety.

Under Section 5A(1) of the enabling Act the Commissioner of Road Traffic, the Director of Roads and the Director of Mechanical Engineering shall attend meetings of the Board but shall have no vote.

The Board exists as a government department appended to the Ministry of Power, Transport and Communication. Though autonomy is not a constitutional and/or structural attribute of the Board, yet all resolutions and decisions thereof are made collectively by members in Board meeting and are binding on every member and all appendages of the Board.

(ii) Powers and Functions of the Board

Section 8A of the enabling Act lays down a catalogue of powers of the Board. The proviso thus proclaims: Notwithstanding any provisions contained in any other Act, the Board shall have power to -

- (a) Issue directives to all organisations in the Republic on all matters relating to road safety;
- (b) Approve the sitting of dwellings and public houses by the roadside;
- (c) Make regulations governing the use of roads, and to undertake periodic reviews of existing roads and road traffic legislation with a view to recommending to the Minister any necessary amendments;
- (d) Review the Highway Code and to determine the standards of traffic signals and regulations relating to traffic signs;
- (e) Lay down specifications of vehicles in regard to minimum standards of safety on the roads;

- (f) Determine requirements in regard to standards of fitness for vehicles;
- (g) Fix standards and methods of examination for certificates and to approve minimum specifications for new models of vehicles before their introduction on the **Zambian Market**;
- (h) Prescribe procedures for the issue of certificates of fitness for old vehicles;
- (i) Specify the type of uniforms for bus drivers and tax cab drivers;
- (j) Deal with any other matter relating to roads and road traffic.

Section 9A of the said Act is a tabulation of the functions of the Board. The proviso declares that notwithstanding any provisions contained in any other Act, the Board shall perform the following functions:

- (a) Consider applications from motor clubs, speedways and race courses in respect of their activities involving the use of roads;
- (b) Introduce from time to time safety measures and make new proposals for road safety, taking into account technological developments, legal requirements and social and economic conditions;
- (c) Review the effectiveness of road safety operations conducted by police officers and road traffic inspectors;
- (d) Introduce new methods of traffic control and review existing traffic control methods with a view to improving the standard of road safety and enhancing public awareness of road safety;
- (e) Co-ordinate road safety programmes and organise publicity and educational campaigns in matters relating to road traffic and road safety;
- (f) Review accident statistics and analyse the causes of major accidents at regular

intervals;

- (g) Review the operations of and standards of driving schools;
- (h) Discharge any other functions relating to roads and road traffic.

(iii) Liaison with other Road Traffic Agencies.

The Roads and Road Traffic Board (hereinafter referred to as the Board) acts as the overseer and spine of all other road traffic agencies and organisations in Zambia with respect to all matters relating to road safety. This means that the Board gives directives to road traffic agencies intended for execution or practical implementation by the latter, while at the same time the Board monitors (with keen interest) the activities of these same traffic agencies, and, consequently, carefully noting the results ensuing from the implementation of the Board's directives. This kind of *modus operandi* is nonetheless possible only with full, unreserved co-operation of other traffic agencies rendered to the Board. Hence, the Board maintains direct links with the Director of Roads, Traffic Police, Road Traffic Commission, Motor Trade Association and Road Safety Associations. The effective scrutiny and coordination of the activities of these road traffic agencies by the Board to ensure road safety validates the Board and gives it real reason for its continued existence.

The road traffic agencies enumerated in the preceding paragraph have direct access to the Board's Meetings and are all members of the Board.

The Road Traffic Commissioner has the powers, conferred upon him by section 64 of the Roads and Road Traffic (Principal) Act(1), to issue driving licences, instructors' licences, et cetera, subject, however, to the Board's approval or any other decision. On the other hand, the Road Safety Associations are currently very inactive at

(1) As amended by S.4 of the Roads and Road Traffic (Amendment) Act, 1974.

local (district) levels due to financial constraints. Similarly, the Pedestrian Association of Zambia (PAZ) is inactive as of now owing to the fact that the constitution of the Association vests substantial powers of governance and decision-making in a single person, namely, the Chairman, for seven years' term of office. Although the functions are alright, the Board feels that PAZ ought to decentralise power to enable its committees at district and provincial levels participate actively in PAZ programmes. Furthermore, the Motor Trade Association works in close co-operation with the Board to ensure that minimum or maximum standards of vehicles are maintained *vis-a-vis* safety. The standards are worked out by the Bureau of Standards.

Local government authorities play an equally significant role, as the other road traffic agencies cited above, in the realisation of the Board's ultimate objectives *vis-a-vis* road traffic safety. Little wonder then the composition of the Board is such that the local authority - municipal council, township council or minetownship board, except rural council - is represented (on the Board) by one town engineer nominated by the Minister for local government and housing.

Local authorities are wholly responsible for the construction, care and maintenance of roads, side lanes, bridges, fords or culverts within the municipality. Erection and maintenance of traffic lights and numerous other traffic (road) signs are also a responsibility of local authorities. What this load of responsibilities entails is that should the local authorities display laxity in the discharge of their statutory duties hinging on matters of roads and road traffic, then doubtless, there is bound to result both human and economic loss to the nation when, as a result of such dereliction of duty on the part of local authorities, life and limb are jeopardised and property consequently damaged.

Needless to say, the present state of affairs is such that in all major towns and cities round the country the roads are badly damaged and have not been re-surfaced for a considerable number of years. Traffic lights, especially in Lusaka, are faulty in many places, while ordinary road signs have either faded away in some places or simply fallen off streets in others. This ramshackle state of affairs has of late engendered numerous road accidents leading to several deaths. According to Mr. P.J. Kalinda⁽²⁾, these accidents are attributable to government's continuous procrastinations in approving Municipal Councils' budget estimates for the next financial year intended to finance capital projects and recurrent expenditure

The argument of Mr. Kalinda is that since local authorities depend almost entirely on government grants, failure to approve budget estimates of local authorities before the commencement of the new budget year leaves the affected local authorities with budget deficits as they now have to operate on the preceding year's budget, usually for as long as six months, while waiting for the government to approve estimates of expenditure for the new running year. This puts local authorities in perpetual state of impecuniosity, thus failing to finance capital projects such as the construction of new roads and resurfacing of old ones, building bridges and maintaining the same, erecting road signs and traffic lights which meet modern technological developments in the present traffic environment. However, often enough the Board has come to the aid of financially embarrassed local authorities by soliciting

(2) The present author conducted an interview with the Chief Education and Training Officer of the Roads and Road Traffic Board, Lusaka, on 12/08/1991. Note also that Mr. P.J. Kalinda also served as a Councillor in the Lusaka Urban District Council, so he could talk competently on the operations of the Local government authorities.

funds on their behalf from donor countries, which funds are then used to maintain road traffic conditions to acceptable standards of safety in order to secure human life and property.

The Traffic Police of the Zambia Police Force is yet another important road traffic agency, and, at the same time, an important state tool for the enforcement of the Roads and Road Traffic law in the Republic. For this reason close cooperation between the Board and the Traffic Police in all areas of road traffic law becomes essentially vital for the achievement of the ultimate objectives of the legislature enunciated in the Roads and Road Traffic Act. However, Mr. Kalinda, the Board's Chief Education and Training Officer, has expressed his own reservations regarding the capability of the Traffic Police to effectively enforce the traffic law under the presently obtaining socio-economic conditions. He contends that any remarkable enforcement of the traffic law by the traffic police is seriously lacking due to lack of motivation on the part of police officers, and, consequently, the Board's directives are ignored. This lack of motivation is a direct result of very low salaries offered to the policemen so much so that they seek to supplement the same through bribery at mounted road blocks. This rampant corruption, unless wiped out, boosts road carnage as traffic offenders go scotfree upon bribing police officers.

(iv) Operational Constraints Confronting the Board

The Board is incapable of discharging its statutory obligations with expected excellence due to, inter alia, the persistent financial doldrums at the helm of its administration. Since the Board is merely a government department, it is, like any other government department, treated to sporadic, intermittent showers of government grants to

finance the Board's operations. This government funding, according to Mr. Kalinda, is far too inadequate to satisfy the Board's budgetary requirements as it comes in quota allocations on the basis of a set annual figure determined by the government fiscal authorities without necessarily taking account of the Board's actual financial needs reflected in its estimates of expenditure.

The financial quagmire the Board is currently wallowing through has effectively curtailed its educational (propaganda) programme. This in fact is one of the statutory functions of the Board. The Board has a duty to educate the various classes of road users on matters of road traffic and keep them constantly aware of the rules and regulations pertaining to roads and road traffic, as well as remind them (road users) of the inherent dangers of ignoring these road traffic regulations. To this extent the Board is expected to publish the Highway Code - a road user's holywrit - and other propaganda material directed at motorists, cyclists, pedestrians and relevant authorities engaged in road traffic control. The propaganda campaign must be constantly unleashed on the target groups so as to have a psychological impact that gradually alters the behavioural attitudes of road users in line with the intended or desired effect.

Yet one notes with profound sadness the fact that the last time the Board published any such propaganda material, especially the Highway Code, was ten years ago, that is, in 1980. Hitherto there has been no educational (propaganda) publications, or films to the same effect, as the Board has no sufficient money to launch such publications however essential to the realisation of the Board's ultimate objectives.

The other difficult hindering the Board's successful execution of its assigned duties is the lack of professional research staff. The Board need undertake relevant research in many areas of its operations such as the social, economical and technological aspects of

the existing road traffic environment at any one time of our various stages of development as a nation. Results of such research will act as an impetus to further research, namely, legal research into the existing law on roads and road traffic. This would then bring about necessary and well-timed changes in the law which would require repeal of some provisions, amendments to others and inclusion by way of enactment of new provisions to cater for new road traffic situations⁽³⁾. Ultimately the revised law ought to be attuned to the obtaining socio-economic conditions in the country in order that it (the law) be practicably workable.

However, the Board is without any research wing and, therefore, lacks professionally orientated future forecast into its operations, vis-a-vis planning. The Board has bemoaned lack of funds for this serious shortcoming, saying the government does not provide funding to cover research work. Whereas in the past the Board could engage professionals on part-time to do relevant research for it, this is no longer possible as the Board cannot afford to pay such researchers, nor can they be lured into the establishment as full-time researchers on account of government's debilitating conditions of service.

The Board's Chief Education and Training Officer, Mr. Kalinda, has remarked that the foregoing problems hampering the work of the establishment are triggered by the fact that the Board has not been allowed to assume autonomy and operate as a professional body. As of now there is just too much political interference with the Board's work, thus misdirecting the efforts of the Board to a point of no fruition. Indeed autonomy is the right panacea for the Board's ills to ensure proper co-ordination of the Board.

(3). *The present Roads and Road Traffic Act, Cap 766 was last revised in 1974.*

CHAPTER FOUR

A CONSPECTUS OF WHAT CAN BE DONE

Following our discussion of the Roads and Road Traffic Law, Cap 766 of the Laws of Zambia, and the attendant legal mechanics of enforcement of the same, that is, the Police, the Roads and Road Traffic Board, the Courts of Law, et cetera, noted in the preceding chapters of this paper, it is clear that there evidently exist certain inadequacies in the existing law; the laxity characterising its administration and the plain lack of enforcement of this same law by some law enforcement agencies. Such negative factors have had a retrogressive effect on the overall performance of the law in the area of road traffic thereby letting the same law assume the role of catalyst in boosting the present high incidence of road carnage, instead of acting as a restraining force in all situations of possible violations of road traffic regulations.

To be successful in its objectives the entire piece of legislation on Roads and Road Traffic or the strategy of road safety must be subjected to fundamental re-examination. For instance, questions of speed, vigilance, communication and propaganda must therefore be considered afresh, bearing in mind the fact that a man at the wheel undergoes complex changes (that is, psychological) as instinctive self-regulation of movement is wholly or partly switched off and this opens the door to undesirable risk and hazard. If legislation has worked in the past, then, quite alright but what we need is more of it, better enforced and brought more speedily into operation. It is submitted here that the Roads and Road Traffic Board must undertake an intensive study of accident data as this will suggest measures that can be taken immediately. That is to say, well-considered thought must continuously be given to the question of road safety if the present terrifying accident rate is to be controlled.

Lack of enforcement of the traffic law is one of the key contributory factors to the high incidence of road carnage in Zambia today. In other words, road carnage is blamed on ill-equipped traffic watchdogs. To take just one extreme case to drive the point home, the Road Traffic Commission (one of the road traffic law enforcement agencies) has at the time of writing only one vehicle for the whole of Zambia. Thus the Road Traffic Commission is dismally ineffectual to the point of being moribund. In the by-gone years of Zambia's economic boom, the sight of the ever-present Road Traffic Commission Officers (popularly called "Cowboys") on roads during the '70s was awe-inspiring and deterred would be offenders to break traffic regulations as the officers went about outmanoeuvring wrongdoers on our roads. This was the case under the then (now deceased) Road Traffic Commissioner, Mr. Elisha Banda. The Commission, which is charged with the task of enforcing the law against defective vehicles pursuant to the provisions of the Roads and Road Traffic Act, has been unable to effectively carry out the job at hand as they lack vehicles inspection equipment. The Incumbent Commissioner, Mr. Lazarus Bwalya, has attributed this sad state of affairs to lack of manpower which has dogged the Commission since 1986, when the Zambia Police Force pulled out of the Commission.[1]

Similary, the traffic police are so lax in enforcing the traffic law that one wonders whether really they understand what they are doing in this regard. One of the objectives of setting up road-blocks is to locate vehicles not roadworthy and remove them from the roads in an effort to improve on the road safety standards. As such every vehicle should be liable for police inspection carried out at road blocks. Yet presently this is not so! On the roads, day-in day-out, cars with defective mechanical conditions such as windscreen wipers which

[1] See *Times of Zambia*, February 22, 1991, p.5

do not work, absence of brake lights and tail lights, and in some cases number plates go missing while in others faulty steering mechanism permitting vehicle to veer from side to side, with no flasher lamps. Such cases as worn-out tyres forcing vehicle to skid beyond the catch of brakes also go undetected.

Then of course there are all sorts of transport currently being used to ferry members of the public, both registered and unregistered. The question in all cases is, where is the Law and where are the law enforcement agencies?

It is not true to say that in every case of traffic law enforcement the police or traffic commission officers would need a vehicle to curb the mischief. Some drivers take alcoholic drinks while driving and this is usually apparent from their breath which the police can readily detect at road-blocks. These innumerable violations of the traffic regulations that go undetected by the police and road traffic commission due to the latter's laxity, constitute a major source of road accidents, however minor the fault might seem, thus endangering the lives of many road users.

Remedial Measures - General

Given the present high rate of motorization in Zambia with its attendant complexities of modern traffic, authorities in the Roads and Road Traffic Board must come to consider the conduct of the motorist to be a matter of scientific enquiry, rather than one on which opinions may be freely expressed. Though the motorist is traditionally the originator of three-quarters of road accidents, we are also mindful of the socio-economic factors, such as damaged roads and critical shortage of public transport forcing people to resort to unlicensed transporters, as equally bringing about road carnage in Zambia.

But the Zambian traffic scenario of late has assumed a strange feature of drinking

drivers. There can be little doubt that death on the road and the drinking driver are closely associated phenomena. It is thus humbly submitted that the offence of drunken driving should entail withdrawal of driving licence and/or impounding of motor vehicle plus a fine of not less than K5000 or one year imprisonment in default, as some of the more effective measures for limiting the accident rate. Such prescriptions as herein suggested are not meant to impose restrictions on the court's discretionary powers but simply serve to demonstrate the extent of deterrence required by the penalty to accord with the gravity of the offence. This seeks to draw Parliament's attention to the fact of the highly inadequate penalty provided for by the existing legislation. As one writer[2] notes, control of alcohol intake when driving is an obvious target for those concerned with road safety; and if the results justify the methods of supervision the majority of citizens should not grieve over some limitations on current social practices. Hence common sense dictates legal penalties for drunken drivers despite the inevitable inconvenience caused by loss of licence and/or vehicle. After all it is only palatable that one has to accept some injustice for the good of society as a whole!

The wearing of seatbelts by drivers or passengers is not enforced by law in Zambia. Be that as it may, the evidence is overwhelming that seatbelts minimize injury risks when accidents occur and it is astonishing that they are not yet obligatory items in the structure of the motor vehicle imported in Zambia as essential as brakes and the steering-wheel. It is high time our Parliament made mandatory the fitting of seatbelts in all newly-imported vehicles introduced on the Zambian market. Law enforcement agents should then follow up the matter accordingly. It is contended here that when offenders are convicted of this and other traffic offences the courts must be allowed wide discretionary powers to deal

[2] Whitlock, F.A. *Death on the Road - A study in Social Violence* (1971) pp 162, 163.

motorist's control system, it must be conducted in accordance with the principles of effective communication. It must be founded on a correct understanding of the 'causes' of road accidents. Realising therefore the significance of information vis-a-vis rules and regulations of road traffic and the necessity of conveying the same to road users so as to make the law meaningful and effective in curbing road carnage, it is all the more the reason for our being particularly careful and selective regarding the mode of communication we employ in our propaganda for road safety. This, though, is the responsibility of the Roads and Road Traffic Board but every one's responsibility to respond to the exhortation proportionate to its impact on the target group. Hence, Cohen tries to show that depending on how communicated, such propaganda information can either be misdirected and have no corresponding effect, or poorly disseminated and produce little or no impact. But also that the information can be communicated in such manner as can eventually change the previously harboured negative road traffic attitudes of some road users. The following is such of Cohen's own words:

"There exists a class of safety slogans which, because they are demonstrably false, produce an effect contrary to that which was intended. Take, for example, the most familiar slogan 'speed always kills' or 'overtaking always leads to accidents'. Most drivers have at sometime exceeded the speedlimit or overtaken when it would have been wiser not to. Yet they have survived without injury. In doing so they have been rewarded for what they have been told is unsafe behaviour. The more frequently a motorist gets away with conduct which is frowned upon by the police or which violates the law, the more convinced he will become that his driving experience falsifies the safety slogans. It follows therefore that slogans, if used at all, should not be worded in such a way as to lead the motorist to despise them because they fly in the face of the facts.

"Slogans will also be relatively ineffective if they are couched in vague terms. It is not enough to say 'Drive Safely' or 'Drive Carefully'. The vast majority

of drivers are quite sure that they drive both safely and carefully, or at least as safely as they can or the circumstances permit. The instructions need to be couched in more specific terms." [3]

(ii) Penalties

It should be acknowledged that the type and degree of severity of legal penalties to be imposed on convicts of whatever traffic offences remain a matter for differing individual opinions and a bone of contention in legal circles. No one single view regarding the manner of punishing traffic offenders with a view to deterring future possible offenders can be accepted forthright as conclusive. A plethora of theories, some tested and others not yet tested, concerning means and ways of punishing traffic offenders, which also reflect various socio-economic, cultural and political set-ups, abound in the law of road traffic and no single system of penalty can claim universal application without any hitches. The present author has already advanced his own personal opinion on the matter, but that is not meant to be the best ever option for deterring would-be traffic offenders. As a matter of fact it is all a question of trial and error method! It is therefore suggested here that we take a cursory study of what systems of penalties obtain in other countries, hoping that such an exercise could help us determine which system suits us best in bringing about the deterrent effect. In the present circumstances the present author feels the purpose would be better served by having recourse (once again) to the lucid and articulate argument of Professor Cohen.

According to Professor Cohen[4], various systems of penalties are adopted by different countries for motoring offences. Thus, in Holland, there is a system of 'Black Marks' for

[3] Cohen, J. *Causes and Prevention of Road Accidents* (1968), p.107

[4] *ibid.* pp. 112,113

bad, careless, or reckless drivers. In Switzerland, a man's driving licence may be taken from him if a policeman suspects he has been drinking even if he has not been involved in any accident. In the same country, insurance companies have a system of malus payments as well as a non-claim bonus. In some American states a motorist involved in a serious crash has literally to clean up the mess on the road. In Britain, fines, imprisonment, and loss of licence comprise penalties imposed on motoring offenders but their effectiveness as deterrents, so scorns prof. Cohen, is highly questionable.

Prof. Cohen goes on to state that in the nature of things, penalties can never serve as a sufficient instrument of road safety. The history of penal methods seems to suggest that although such drastic measures as hard labour, hardfare and a hard bed, let alone sterilization or castration, might prove to be a powerful deterrent for a short while (if allowed by public opinion), drivers, contends Cohen, would, bit by bit, dare to suffer the worst. They would get hardened and toughened, and penalties would have to escalate to ever greater levels of severity. In Cohen's own view, there still remains considerable vagueness about the notion of 'deterrence'. It is, he says, one thing to punish a man who has committed an offence in order to try and deter him from committing another. It is quite a different thing to deter a man who has not yet committed an offence.

Finally, prof. Cohen wraps up his 'anti-penalty' submission with the exhortation that we must accordingly look elsewhere than to penal measures for bringing about a system of road safety, unless the secret lies in the enforcement system..... On the sole matter of enforcement, he points out that it is now technically possible to combine sensor units for detecting drivers who exceed the speed limit with a device for identifying both the vehicle and the driver. The information could be automatically transmitted to a processing centre from which a warning could be straight away sent to the driver. If these units reduced

accidents by, say, 5% their installation cost would be repaid in about two years.

While it is appreciated that prof. Cohen's argument is highly intelligible and substantive, we should not forget the inequities in the levels of socio-economic development of countries with such a contrasting picture as U.S.A. and Zambia. U.S.A. has the economic power and higher literacy levels of its population which makes it quite easy to engage high-tech traffic control equipment. Zambia has no economic power to do just like U.S.A. and literacy level is quite low. But we can not sit back and wait till when our lot will improve. We have to make do with the little resources at our disposal and use punitive measures even though only effective temporarily.

CONCLUSION

The Zambian Society is currently, holding on to an empty shell of the collapsed national economy. The economy no longer has any more goods and services to deliver to the people. Literally every governmental institution in the land has come to a standstill. The government of the day (UNIP government) is incapable of providing for the welfare of the citizens so that the order of the day has become: 'Everyman unto himself, God for us all!' Zambia is no longer a welfare state, as the powers that be would have us believe; but the truth of the matter is that the nation is right on the course of a Laissez-faire state.

What, therefore, are the implications of this changed state of affairs vis-a-vis the practice in the law of roads and road traffic, Cap 766?

The Socio-economic scenario is such that local authorities due, interalia, to financial constraints, have for several years now not been repairing damaged roads and replenishing old, faulty or defective road signs and traffic lights with new installations that meet modern traffic standards. One knows only too well that the abysmal potholes characterizing our roads in our towns and cities constitute a great danger and a serious impediment to the smooth movement of traffic on the roads. As such they (potholes) are a fertile source of road accidents. That is to say that road accidents, more often than not, become inevitable however careful and alert the driver might be and however immaculately perfect the condition of the car, especially during the rain season. The same goes for traffic lights and other road signs. Moreover the rate of motorization in the country is so high that most roads have proved too small or too narrow thus encouraging never-ending traffic congestions resulting in several road accidents due to extreme difficulty in movement of road traffic.

Furthermore, a critical shortage of public transport has become highly persistent to the extent where the majority of the people, especially workers, are forced to board unlicensed private vehicles of illegal operators. These illegal transporters are constantly wary of the police and so are in a haste to make money by carrying as many people as they can in a short time before the police can detect them. Consequently they do their illegal trade without regard to traffic regulations as a result of which accidents ensue. Those people living in remote rural areas where roads are impassable due to government neglect are impelled to perch their poor souls on top of cargo-vehicles that venture into such areas as public transport is not availed of them. The result is of course road accidents.

What we are trying to say is that the legislators ought to make laws that give allowance for or cognizance of the socio-economic and technological changes in our society. The changed circumstances are not entirely the fault of the motorist or any other road user and sometimes the latter is compelled to behave contrary to the law by force of circumstances. The Law must be adjusted, that is, reviewed from time to time to take account of prevailing conditions in the socio-economic and technological environment which were not anticipated originally or since then overtaken by new developments. This is meant to make the law practicable and not seem as though it is designed to penalise road users.

On the other hand, law enforcement agents like the Police, should be equipped with modern road traffic equipment that can thoroughly and accurately detect violations of traffic regulations such as speed in excess of the prescribed limit; giving details of particulars of the vehicle, running speed per hour, direction, and photographs of the crew and/or 'passengers', details of hit-and-run vehicles, and also drinking drivers. The equipment must be designed to meet modern high-tech standards of vehicles currently inundating the Zambian roads, especially those imported from Japan and North America. It is too expensive but also worthy

it! Such vehicles equipment can greatly help in reducing road accidents through effective police check on possible and actual violations of traffic regulations. The police can utilise relevant information gathered in the course of using the said road traffic equipment to successfully prosecute traffic offenders. This way the roads and road traffic law could be enforced legally, that is, there can be maximum compliance with the traffic law.

Needless to say, a law is necessarily passed to regulate the conduct of human beings in society, while at the same time it ought to serve man by meeting his needs of the day according to the stage of development a given society has reached. So much so that where the law in any one particular area tends to lag behind it thereby becomes a fetter on society insofar as it hinders development for individuals and social progress. It is no longer good law!

Hence the high incidence of road accidents, and other related road traffic law violations, could be suggestive of the monstrous rigidity of or inflexibility in the law, which fails to attune itself to changed, contemporary road traffic demands and practices in Zambian Society and incidental behavioural characteristics of the people, thus making it practically difficult for the people to do certain things in the manner best suited to their conditions of life at a particular time. Or, the law is too lax, thus giving vent to rampant criminal activities or lawlessness through arrogant and deliberate disregard for the law. This may be largely attributable to the failure by the law enforcement agents to reach out for culprits and let the law take its own course.

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