

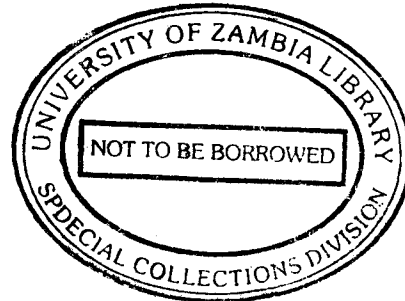
THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I RECOMMEND THAT THE OBLIGATORY ESSAY PREPARED UNDER MY SUPERVISION BY:

FAITH MOONO

ENTITLED



PUBLIC TRANSPORT: DO PASSENGERS HAVE ANY RIGHTS?

BE ACCEPTED FOR EXAMINATION. I HAVE CHECKED IT CAREFULLY AND I AM SATISFIED THAT IT SATISFIES THE REQUIREMENTS RELATING TO THE FORMAT AS LAID DOWN IN THE REGULATIONS GOVERNING OBLIGATORY ESSAYS.

22/12/05

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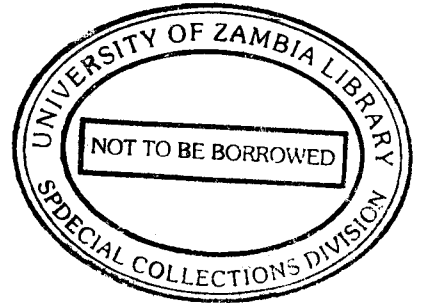
SUPERVISOR.....

MR. G. MULENGA

THE UNIVERSITY OF ZAMBIA
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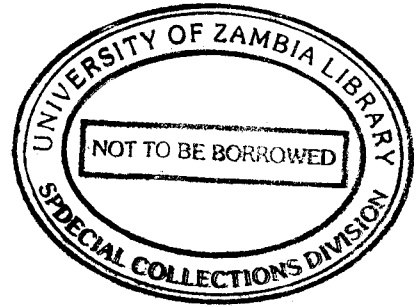
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SUPERVISOR.....
MR. G. MULENGA

PUBLIC TRANSPORT: DO PASSENGERS HAVE ANY RIGHTS?



BY:
FAITH MOONO

AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA
LAW FACULTY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF BACHELOR OF LAW (LLB.)

THE UNIVERSITY OF ZAMBIA
P.O. BOX 32379
LUSAKA

DECEMBER, 2005

DEDICATION

To my parents, uncle Lasford, and the rest of the family.
You sacrificed a lot to ensure that I smoothly complete my studies.

ACKNOWLEDGEMENTS

In compiling this work, I am conscious of the help that was generously provided by a number of persons.

My profound debt of gratitude goes to my supervisor, Mr. Geoffrey Mulenga who tirelessly read through the entire essay thereby rendering the necessary assistance and constructive suggestions and accordingly saving me from obvious pitfalls. In this way, I was helped to remain relevant to the gist of the essay.

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PREFACE

Transport and communication are very important aspects of socio-economic and political development. Public transport is extremely important as it brings populations of remote areas into the realm of development. However this sector has been plagued by road traffic accidents that have claimed human life and thus impeding passengers' right to life.

Having realized the importance of transport in national development and the consequent alarming loss of human life- a vital resource in national development- the Road Traffic Act, 2002 was enacted to provide inter alia: for the establishment of the Road Transport and Safety Agency; for a system of road safety and traffic management; for the licensing of drivers and motor vehicles; for the registration of motor vehicles and trailers; for the compulsory third-party insurance of motor vehicles; for the licensing and control of public service vehicles; for the promotion of road safety; for the regulation of road transport between Zambia and other countries...and to provide for matters connected with or incidental to the foregoing. This Act primarily enhances operations of the transport sector thereby providing duties and rights of a passenger.

Despite the existence of this Act, road traffic accidents have continued to happen at an alarming rate, and in some instance, claiming human life- a phenomenon one cannot place a price tag on.

Zambia, as an economy moving from a monopolistic nation that solely depended on copper for its foreign exchange to one encouraging other economic ventures like tourism and agriculture, greatly needs to improve the operations of the transport sector because increased trade in the wake of further economic specialization will also require more transportation of goods and people.

This will indeed induce economic development. But who would want to invest in a nation where human life is not adequately preserved as seen from the rising number of road traffic accidents?

It is for this reason that this essay is primarily concerned with the rights of a passenger as outlined in the Road Traffic Act, 2002.

The first chapter addresses the relevant provisions of the Road Traffic Act, 2002 that improve and ensure road safety by providing for the rights and duties of passengers. The rights identified in the chapter include the right to be driven by a sober and qualified driver and the right not to board a public service vehicle carrying passengers in excess of the prescribed number. These rights are provided for in section 56(1) and section 115(2) of the Road Traffic Act, 2002 respectively.

The problems encountered on public transport by road passengers in relation to road traffic offences with specific reference to the Road Traffic Act, 2002 are examined in Chapter two. In this vein, passengers have identified the carriage of

passengers in excess of the permitted number, drunken driving and excessive speed as some of these problems.

Chapter three is a discussion of the major causes of road traffic accidents in Zambia. The chapter analyses the road traffic accidents situation in Zambia. Drunken driving, exceeding speed limits and recklessness are some of the causes of accidents in Zambia.

The construction of the provisions of the Road Traffic Act and the lack of supportive legislation are some of the difficulties faced in implementing the provisions of the Road Traffic Act, 2002 in an effort to protect the rights of passengers. These are discussed in Chapter four.

Since public safety is one factor that is of concern to both the general public and the government, there is need to sensitize the passengers that they do have enforceable rights that would greatly preserve their right to life and property as most of the causes of road traffic accidents are preventable. In addition, there is need to amend certain provisions of the Road Traffic Act to enhance passengers' rights. Accordingly, the concluding chapter addresses proposed legislative enactments that would adequately address and enhance the rights of passengers so as to reduce the high prevalence rate of road traffic accidents.

CHAPTER ONE

AN ANALYSIS OF SOME PROVISIONS OF THE ROAD TRAFFIC ACT, 2002

1.1 INTRODUCTION

Since independence, the Zambian government has recognized the central role of transport in national development. Accordingly, the government has always tried to sustain the system by fairly allocating some resources from the government's limited coffers.

The overall objective of the road transport sector has been to provide an efficient, reliable and affordable transport system in the country. Accordingly, since the road transport service is the main system of transportation utilised by the majority of Zambians, this essay will restrict itself to road passenger services.

The Road Traffic Act, 2002 (hereinafter referred to as the Act) was enacted to provide for the establishment of the Road Transport and Safety Agency; for a system of road safety and traffic management; for the licensing of drivers and motor vehicles; for the registration of motor vehicles and trailers; for the compulsory third-party insurance of motor vehicles; for the licensing and control of public service vehicles; for the promotion of road safety; for the regulation of

road transport between Zambia and other countries...; and to provide for matters connected with or incidental to the foregoing.¹

1.2 OUTLINE OF THE ACT

The preliminary part of the Act establishes the Road Traffic Act. In addition, it contains the interpretation section that explains the meaning to be attached to certain words used in the Act.²

Provisions concerning the establishment of the Road Transport and Safety Agency including its functions, powers and composition are outlined in Part II of the Act³.

The third Part of the Act provides for the registration of motor vehicles and trailers. This Part explains the procedure to be followed on the change of ownership of motor vehicles, which vehicles are exempt from the need for registration and the tests of satisfactory condition of motor vehicles and trailers by a road traffic commissioner.⁴

Part IV deals with the licensing of vehicles. This ensures that all vehicles that are to be used on the roads are approved by a licensing officer. It also encompasses

¹ Road Traffic Act, 2002, The Preamble

² Section 1 of the Road Traffic Act, 2002

³ Sections 3 to 5 of the Road Traffic Act, 2002

⁴ Sections 7 to 29 of the Road Traffic Act, 2002

provisions on how to obtain the licence, its duration and when the licence can be suspended.⁵

Licensing of drivers of motor vehicles and driving schools are presented in Part V. It entails regulating and controlling driving schools thereby guaranteeing that driving schools will only issue a driving licence to persons who are competent to drive by passing the driving tests. In addition, such persons should have a physique, vision, hearing, and bodily and mental fitness such as to deserve the issuance of a driving licence⁶.

Additional requirements for driving licences, the suspension, cancellation and endorsement thereof are laid down in the sixth part of the Act. This Part is generally concerned with the powers of the court to cancel or suspend a driving licence of a person who has been convicted of an offence under the Act⁷.

Part VII stipulates for the compulsory third-party insurance that entails that users of motor vehicles are to be insured against third party risks. Accordingly, a passenger who has been injured or has suffered death needs to be compensated by the owner of the vehicle in question.⁸

⁵ Sections 30 to 55 of the Road Traffic Act, 2002

⁶ Sections 56 to 74 of the Road Traffic Act, 2002

⁷ Sections 75 to 85 of the Road Traffic Act, 2002

⁸ Sections 86 to 99 of the Road Traffic Act, 2002

The eighth part of the Act is primarily concerned with which vehicles that are to be used as public service vehicles for the carriage of goods and for the carriage of passengers.⁹

Provisions for the examination of certain classes of vehicles by a vehicle examiner are contained in Part IX. The Part outlines instances when the vehicle examiner can issue a certificate of fitness e.g. after examining the construction and equipment applicable to such a vehicle.¹⁰

Exclusive concessions are to be made in Part X. The Minister grants these concessions to persons to promote motor omnibus services¹¹. A concession is simply a recognition or an acknowledgement that the person to whom it is granted will provide transport services in the prescribed area¹².

Part XI deals with road safety provisions and driving offences. This Part provides for the enhancement of road safety by criminalizing certain conduct like driving when using a hand held mobile telephone, and overloading¹³.

Miscellaneous provisions relating to roads are laid down under Part XII of the Act. This Part of the Act empowers the Minister to bring the Act or part of it into force whenever it is necessary to do so. The Minister is at liberty to declare by

⁹ Sections 100 to 120 of the Road Traffic Act, 2002

¹⁰ Sections 121 to 133 of the Road Traffic Act, 2002

¹¹ Sections 134 to 147 of the Road Traffic Act, 2002

¹² Section 2 of the Road Traffic Act, 2002

¹³ Sections 148 to 225 of the Road Traffic Act, 2002

Statutory Instrument the coming into force of different parts of different sections of the Act on different days.¹⁴

1.3 PROVISIONS OF THE ACT ADDRESSING PASSENGERS' RIGHTS

From the general outline of the Act, one can deduce certain enforceable rights and duties of passengers. However, both the enforcement authorities like the police and the passengers themselves have either neglected or do not know about the existence of these rights and duties. Ignoring what is considered to be minor rights and duties has led to the consequent loss of human life through road traffic accidents that could be prevented by protecting and enforcing these rights. It is from this premise that this chapter is primarily concerned with the provisions of the Act addressing the legal rights and duties of road passengers.

A right is to be viewed in this context as that in which a person has a just or lawful claim¹⁵. In the words of Salmond, it is "an interest, which will be recognised and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong".¹⁶

Duty on the other hand is the correlative of a right¹⁷. Hence, it is an act that is due by legal or moral obligation.

¹⁴ Sections 226 to 233 of the Road Traffic Act, 2002

¹⁵ Curzon, LB. Dictionary of law (4th ed), London: Pitman Publishers, (1997) 338

¹⁶ Dias. Jurisprudence, (5th ed), London: Butterworths, (1985) 26,

¹⁷ *Ibid*, p30

Section 115(1) of the Act provides that:

“The gross weight of a public service vehicle, the weight of goods and the maximum number of passengers that may be carried on a public service vehicle shall be determined by a vehicle examiner in the prescribed manner, ...and shall be legibly painted in a conspicuous position on the vehicle in such manner as may be prescribed”¹⁸

Further, the Act states that if the number of passengers in a public service vehicle exceeds the prescribed number, then, the conductor of the vehicle, or the driver, shall be guilty of an offence...¹⁹

From these two provisions, one may deduce certain rights and duties of a passenger. Hence, on one hand, passengers do have a right not to board a public service vehicle that is carrying passengers in excess of the prescribed number as it is an offence under subsection (2) of section 115 of the Act. Further, since the enforcement authorities may not be aboard a vehicle that is overloaded, it is therefore the duty of passengers on the other hand not to board a vehicle when the number of passengers has reached the prescribed number. This may be difficult to enforce for the passengers because not all public service vehicles clearly show on their vehicles the permitted number of passengers that a vehicle may carry.

The duty not to enter a full vehicle is expressed in section 115(3) of the Act, which states:

“If any person being requested by the conductor or driver of the public service vehicle not to enter the vehicle enters or attempts to enter the

¹⁸ Section 115(1) of the Road Traffic Act, 2002

¹⁹ Section 115(2) of the Road Traffic Act, 2002

vehicle when it is carrying the full number of passengers which it is permitted to carry, he shall be guilty of an offence.”²⁰

However, such a scenario rarely occurs, as it is normally the conductor or the driver who will order people to squeeze themselves into a vehicle despite the number of passengers exceeding the prescribed number.

Another right of a passenger is the right to be driven by a mature, sober and qualified driver. Thus a driver of a public service vehicle must have attained the age of twenty-five²¹ and be the holder of a valid driving licence.²²

As section 56(2) of the Act states.

“... No person shall permit or employ any person to drive a motor vehicle on a road unless that person is the holder of such a driving licence, and if any person acts in contravention of any of this provision he shall be guilty of an offence....”

For the passenger to enjoy this right, there is a correlative duty on the employers of public service vehicle operators and the drivers themselves who occasionally allow unqualified persons to drive the vehicle. To enforce this right, the police may impound the vehicle as provided for by section 56(4) of the Act that provides:

“ Any motor vehicle which is driven on a road by any person who is not a holder of a valid driving licence authorising him to drive a motor vehicle of

²⁰ Section 115(3) of the Road Traffic Act, 2002

²¹ Section 64(1)(c) of the Road Traffic Act, 2002 “notwithstanding any provisions of this Act, no person shall obtain or attempt to obtain a driving licence or provisional driving licence to drive a public service vehicle carrying passengers for hire or reward, or a private motor omnibus used otherwise than for private or domestic purposes unless he has attained the age of twenty-five and acquired at least two years driving experience”

²² Section 56(1) of the Road Traffic Act , 2002

that class or description, may be impounded by any road traffic inspector in uniform or by any police officer.”²³

In addition, the qualified driver of a motor service vehicle must not be so intoxicated with liquor that he or she may be rendered incapable of taking control of the vehicle.²⁴

Accordingly, passengers are obliged to report any driver who has been incapacitated by the use of alcohol or narcotic drugs on duty²⁵.

To recover one’s fare is yet another right that is provided for by the Act. This right however is premised on the condition that the scheduled journey has been delayed by at least six hours. The relevant provision on this aspect declares:

“Any passenger in public service vehicle who has paid his fare may if the vehicle fails to start on its journey from its terminal point within six hours of the time approved in its time-table, or if the operator fails to convey him to his destination within a reasonable time, recover the whole fare paid by him.”²⁶

²³ Section 56(4) of the Road Traffic Act, 2002

²⁴ Section 157(1) of the Road Traffic Act, 2002 states “any person licensed to drive a public service vehicle who, at any time within six hours before the time at which he is due to take charge of a public service vehicle in respect of any journey, by the consumption of intoxicating liquor renders himself incapable of taking proper control of a motor vehicle, shall be guilty of an offence and shall be liable upon conviction, in the case of a first offence, to a fine not exceeding five hundred penalty units or to imprisonment not exceeding six months and in the case of a second or subsequent offence to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding one year, or to both”

²⁵ Section 118(4) of the Road Traffic Act, 2002

²⁶ Section 120(2) of the Road Traffic Act, 2002

When a passenger makes such a demand, it is the duty of the person who received the fare to return the money, and failure to do so is an offence under the Act.²⁷

Closely related to the above right is the right not to be overcharged. This postulates that all operators and holders of what are classified as public service vehicles must comply with the rates and fares that have been laid down and fixed in respect of any service.²⁸ Accordingly, overcharging is unlawful.

Therefore, passengers who have been overcharged are entitled to recover their money as provided for by section 120 of the Act²⁹.

Public service vehicles more often than not are found at filling stations being refuelled whilst passengers are right inside the vehicle. This problem also needs to be addressed because of the volatile and dangerous nature of hydrocarbons like petrol that can claim a lot of lives in the event of accidental combustion. To prevent such an event, the Act asserts that it is an offence for any driver of a public service vehicle to allow petrol or other inflammable fuel into a public service vehicle while any passenger is within such a vehicle.³⁰

In addition, it is an offence for any driver of a public service vehicle to carry petrol or any other inflammable fuel in a public service vehicle.³¹

²⁷ Sub-sections (3) and (4) of Section 120 of the Road Traffic Act, 2002

²⁸ Section 141 of the Road Traffic Act, 2002

²⁹ Road Traffic Act, 2002

³⁰ Section 196(1), (2) and (3) of the Road Traffic Act, 2002

³¹ Section 196(3) of the Road Traffic Act, 2002

Thus, there is a duty imposed on the driver to ensure that a vehicle being refuelled is in fact vacant and failure to do so is an offence as shown by the two sections of the Act³².

Lastly, but not least, passengers do have a right to travel in a fit and road worthy public service vehicle. As section 122 of the Act says:

“No vehicle...shall be used on any road unless there is in force in respect of such vehicle ...a valid certificate, hereinafter referred to as a certificate of fitness, issued by a vehicle examiner, and no licensing officer shall issue a motor vehicle... licence for any vehicle ...unless there is produced to him such evidence as may be prescribed that either on the date the licence comes into force in respect of that vehicle...a valid certificate of fitness, or, or that such vehicle... will be exempt from the need to hold such a certificate:

Provided that

- i) No person shall be liable to a penalty for a breach of this section if he proves that he has not had a reasonable opportunity to obtain a certificate of fitness.”³³

Generally, if one is a frequent user of public service vehicles, one observes that the conditions of the vehicles leave much to be desired. One may then wonder whether all vehicles on the road do indeed have a valid certificate of fitness issued after an examination by a qualified examination officer as provided for by section 122 of the Act³⁴. Consequently, the passengers' right to travel in a road worthy and fit vehicle is interfered with.

This chapter has laid down some provisions of the Act that provide for the general rights of passengers. These rights encompassed in the Act have

³² Section 196(2)(3) of the Road Traffic Act, 2002

³³ Section 122(1) of the Road Traffic Act, 2002

³⁴ supra note 33

however not been fully addressed so as to ensure their enjoyment. Therefore, there is need to enhance and implement these provisions in an effort to guarantee road safety and minimise road traffic accidents.

Chapter Two is a discussion of the more prevalent shortcomings identified in public transportation by road passengers.

CHAPTER TWO

PROBLEMS ENCOUNTERED BY ROAD PASSENGERS ON PUBLIC TRANSPORT

2.1 ROAD PASSENGER PROBLEMS

Road passengers more frequently than not encounter a lot of problems with the public transport sector. From random interviews carried out with regular public transport users, carrying passengers in excess of the prescribed number, drunken driving and over speeding are some of the major problems that passengers are faced with. Other problems identified as inconveniencing the public transport sector include the playing of loud music, dirty buses, breach of contracts, delayed transportation and bad vehicle seats.

While some of the problems experienced are purely social, it is imperative to state that there is a relationship between social and legal change because social change can influence legal change by exerting pressure on the relevant authorities, which can later lead to legislative enactments³⁵. However, this depends on the type of political system prevailing in a given country and the type of change that people want.

³⁵ Friedman, W. Legal Theory, (1972) 432, Butterworths

Accordingly, change is inevitable because society is dynamic.³⁶ Thus, whilst there is need for the law to defend vested interests as outlined in the statutes and law books, the lawyer must consequently be seen as a principal participant in the implementation of development plans. This entails among other things that the prevalent law should be alive to what is happening in society if it is to adequately find an answer to address society's problems³⁷.

Below is a discussion of the more prevalent shortcomings identified in public transportation by passengers.

2.1.1 Carrying Passengers in Excess of the Permitted Number

This is the main problem that passengers complain of. Carrying more passengers on a vehicle than a vehicle is permitted to carry is an offence under section 115(2) of the Road Traffic Act, 2002.³⁸

Asked why passengers consent to being carried in excess of the prescribed numbers, one Lusaka resident who frequently does business in the rural areas says:

"In the rural areas, we have no choice. It is a matter of being left behind or boarding an already full bus because you do not know when the other bus will

³⁶ Dias. Jurisprudence, (5th ed), (1985) 203, Butterworths,

³⁷ Bodenheimer, E. Jurisprudence: The Philosophy of Modern Law (1976) 85, Stevenson and Sons

³⁸ Section 115(2) of the Road Traffic Act states, "if in any public service vehicle, there are more passengers than the vehicle is permitted to carry, the conductor of the vehicle, if any, or if no conductor is carried, the driver, commits an offence and is liable, upon conviction, to a fine of two hundred penalty units in respect of every passenger carried in excess of the permitted number".

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pass by. Since there is a shortage of transport in the rural areas, we find it very normal to get on a full vehicle as long as one finds space for the body to be accommodated”³⁹.

Such situations are indeed prevalent in rural areas because of lack of transport facilities and no roadblocks set up to monitor the operations of the public transport sector.

Does it then mean that the situation is different in urban areas where there is an abundance of public service vehicles and the presence of road traffic officers?

The answer is a definite ‘No’.

As one regular passenger pronounces, “the problem of being carried in excess of the permitted number shall never end. This is basically because we don’t know how many passengers a particular type of vehicle is permitted to carry. Hence, when the conductor says ‘sengeleleni uko’⁴⁰ we simply squeeze ourselves into the vehicle. And even if we knew how many people a vehicle is permitted to carry who will start counting how many people are inside the vehicle?”⁴¹

The passenger accordingly appeals to the relevant Ministry to educate the conductors and bus drivers as to the dangers of carrying more passengers in excess of the permitted number.

³⁹ Random Interview carried out on 25th July 2005 at Lusaka’s Intercity Bus Terminus

⁴⁰ Bemba for ‘move this side’

⁴¹ Random Interview carried out on 25th July 2005 at Lusaka’s Intercity Bus Terminus with a Copperbelt resident

"We stopped one of these luxury coaches a few kilometers from Mpika. The bus stopped and the conductor asked us to get inside. We thought we would find some empty seats in the bus but there was none. So we had to stand in the alley until a number of passengers disembarked in Kapiri Mposhi. Surprisingly, the conductor demanded for the full fare".

This is yet another sentiment from a passenger who was traveling from the Northern Province of Zambia.

The random interviews carried out reveals that the carriage of passengers in excess of the permitted number is prevalent everywhere in Zambia.

2.1.2 Exceeding Speed Limits

Most roads have road signals to show the permitted speed limit prescribed by the Road Transport and Safety Agency⁴². Accordingly, all drivers must observe these speed limits⁴³. Section 170(2) of the Act declares that "any person who fails to comply with any direction conveyed by a road traffic sign commits an offence".

⁴² Section 148(1) (a) of the road traffic act provides that "the general speed limit in respect of every public road or section thereof situated within the area of a local authority...;"

Section 148(2) states, "an appropriate road traffic sign, set by the agency may be displayed on any road indicating a speed limit other than the general speed limit which under sub section (1) applies in respect of that road..."

⁴³ section 148(4) no person shall drive a vehicle on a public road at a speed in excess of-

(a) the speed limits under subsection (1) applies in respect of that road;
(b) the limit indicated under subsection (2) by an appropriate road traffic sign, set by the agency in respect of that road; or
(c) the speed limit prescribed by the Minister, in consultation with the Agency, under subsection (3) in respect of the class of vehicle concerned.

notwithstanding, section 149 states that, " Drivers of vehicles belonging to fire-fighting organisations, rescue organisations or hospital, and a traffic police department who drives a vehicle in the execution of drivers duties may exceed the applicable speed limit."

However, even where a particular road has no such signals, it is only prudent that a driver of a public service vehicle observes a reasonable speed.

In Zambia, however, even the presence of potholes does not deter public service vehicle drivers from over speeding.

“We do have poor roads...but then potholes should equally slow down drivers outside the safari rally”⁴⁴.

“Our drivers race each other down the road. One might mistake them for Muna Singh participating in a motor rally. They simply forget that their vehicles are carrying human beings”⁴⁵.

These are some of the reactions from public transport passengers. Furthermore, the interviews carried out show that this occurrence is most prevalent amongst drivers of luxurious coaches. There seems to be competition as to which operator’s coaches reach a particular destination in the shortest time.

Consequently, the majority of Zambian passengers who were interviewed blame the drivers of public service vehicles for their lack of road sense. A Chipata

⁴⁴ <http://newsvote.bbc.co.uk/1/hi/talking-point/debates/africa/725337.stm>

⁴⁵ Random Interview carried out on 1st August, 2005 at Lusaka’s City Market

dweller recounted how on a journey from Lusaka to Chipata, the driver flew over potholes on a bad stretch of road from Nyimba to Chipata.

“The children I was traveling with were so terrified that they asked me whether there were other means of getting to Lusaka”. She states of her experience: “if a bus traveling at such a speed goes off the road, how many people would survive?”⁴⁶

The passenger accordingly appeals to the Minister of Transport and Communications to bring sanity to the drivers and their masters.

2.1.3 Drunken Driving

Driving whilst under the influence of alcohol or drugs is an offence under section 157 (1) of the Act.⁴⁷ Section 118 (2) of the Road Traffic Act, 2002 further provides that “any person licensed to drive a public service vehicle who, at any time within six hours before the time at which he is due to take charge of the vehicle in respect of any journey, by the consumption of intoxicating liquor renders himself incapable of taking proper control of a motor vehicle, shall be guilty of an offence...”

⁴⁶ Jere, *The Post Newspaper*, 17th January, 2004.

⁴⁷ Section 157(1) of the Road Traffic Act, 2002 provides that “any person who driving or attempting to drive a motor vehicle on an road, is under the influence of intoxicating liquor or narcotic drugs to such an extent as to be incapable of having proper control of such vehicle commits an offence and is liable upon conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a period not exceeding five years, or to both.” Section 118 (2) of the Road Traffic Act, 2002 further provides that “any person licensed to drive a public service vehicle who, at any time within six hours before the time at which he is due to take charge of the vehicle in respect of any journey, by the consumption of intoxicating liquor renders himself incapable of taking proper control of a motor vehicle, shall be guilty of an offence...”

The random interviews carried out reveal that some public service vehicle drivers consume alcohol when they are on duty.

One passenger stated how he and a certain man he did not know to be a driver shared intoxicating liquor whilst waiting for a bus he had boarded to get full. "It was only when the man I was drinking with had occupied the driver's seat that I realized that he was a driver", lamented the passenger⁴⁸.

"The existence of places where alcohol can be bought and consumed by drivers near or right inside bus stations encourages drivers to drink when they are on duty", stated another passenger⁴⁹.

Asked why the passengers do not report such drivers as provided for by section 118(4) of the Act⁵⁰, most passengers expressed ignorance on the existence of such a provision. Others however said that it made no difference whether such a driver was reported or not.

"After all no one will replace such a driver and who has the time to start reporting such a case"⁵¹, commented one passenger.

Some passengers have suggested that police personnel be located on the gates of stations to detain drivers who have consumed alcohol.

⁴⁸ Random Interview carried out on 25th July 2005 at Lusaka's Intercity Bus Terminus

⁴⁹ Random Interview carried out on 1st August 2005 at Lusaka's City Market

⁵⁰ Section 118(4) of the Road Traffic Act, 2002 states that "a passenger of a public service vehicle is obliged to report any driver contravening section 118(1)(2)

⁵¹ Random Interview carried out on 25th July 2005 at Lusaka's Intercity Bus Terminus

However under the current law this is not possible because the police have no authority under the law to detect the alcohol content of drivers who are suspected of having been intoxicated by liquor⁵².

2.2 SOCIAL PROBLEMS

These problems identified by passengers are purely social and not legal. Nevertheless, since most passengers have identified them amongst the problems they encounter on public transport, it is vital to address these ills because they do indeed render the PSVs to be unroadworthy and one might question how such vehicles are issued with a certificate of fitness as provided for by section 122 of the Act⁵³.

2.2.1 Dirty Buses

Fruit peels, plastic bags, empty containers and sweet wrappers are what passengers recounted as making most buses dirty.

“Some buses are simply filthy, imagine one day I got on a bus were there was vomit. If this vomit were from a person with cholera, wouldn't some innocent passenger have contracted the disease?⁵⁴

Hence, there is need for bus drivers and their conductors to clean the insides of their buses at least twice a day. Passengers do not have to travel in an unhygienic environment⁵⁵.

⁵² section 158(2) of the Road Traffic Act,2002 empowers medical practitioners to conduct the relevant tests to detect the alcohol content of a driver

⁵³ supra note 33

⁵⁴ Random Interview carried out on 30th July, 2005

2.2.2 No Respect for Passengers

"A customer is always right" is a saying that has no relevance to most public service vehicle operators. Thus most passengers have complained of being insulted even when there is no need for disparaging words. One passenger told of how he wrongfully boarded a bus that was not traveling to his intended destination. Upon realizing this, he asked the conductor to drop him off. 'Kushishita', 'mwachoka ku chiboolwa'⁵⁶ was all he said and the driver did not heed to what the passenger was saying and continued driving until the bus had traveled a considerable distance.

Another passenger said that she was told not to behave like a dog and heed to what the conductor was saying instead of refusing to squeeze herself where there was no space at all.

2.2.3 Breach of Contracts

As the term signifies, this implies the violation of an agreement. In this aspect, it means that the conductor with whom one contracted to reach a certain place simply changes their mind and makes a passenger disembark.

'It is very inconveniencing and frustrating. On one occasion, I was delayed for about four hours. I got on a bus from Mporokoso, which was heading for Lusaka. When we reached Kapiri Mposhi the driver changed his mind about proceeding

⁵⁵ <http://www.irinnews.org/S-report.asp?ReportID=41686> & Select Region=Southern Africa.

⁵⁶ Are you from the village?

to Lusaka. I was forced to board an empty bus that took almost three hours to start off. If the conductor had returned my money back I would have boarded an already filled bus and would have arrived in Lusaka on time”⁵⁷.

2.2.4 Welded Seats

Passengers have explained how they have often sustained injuries and others torn their clothes because of welded seats in some public service vehicles. Thus, the roadworthiness of certain public service vehicle must be questioned.

“I believe some of these vehicles were not intended to carry passengers but luggage” was all a public transport passenger said after explaining how her dress was mercilessly torn into two when one of the exposed metals caught her synthetic material.⁵⁸

2.2.5 No Windows

One wonders why certain vehicles are neglected by their owner to such an extent that they do not have proper windows. Hence, during the rainy season, some passengers have complained of how they were soaked by the rains because the bus had no windows and the rain continued to pour on him. “All the conductor did was to give me his coat so that I could cover the open area”⁵⁹.

⁵⁷ Random Interview carried out on 30th July, 2005 at Lusaka’s Intercity Bus Terminus with a Northern Province dweller

⁵⁸ Interview carried out on 1st August in Ndola

⁵⁹ Random Interview carried out on 1st August

In such a scenario, the bus operators who improvise plastics for windows can even be applauded because this indeed can protect one from the rains. The question to ask is why a vehicle that is used for making money can fail to be placed in good conditions?

This Chapter has examined the problems that passengers have identified as delimiting the standards of the public transport sector. How these problems can be adequately addressed is a matter of discussion for Chapter Five.

The preceding chapter will focus on the major causes of accidents and it will show that there is a relation between the problems encountered by the passengers and some of the causes of accidents.

CHAPTER THREE

THE MAJOR CAUSES OF ROAD TRAFFIC ACCIDENTS

3.1 INTRODUCTION

Although Africa is a continent with fewer cars on the roads than any other continent, Africa leads the world in deaths from road traffic accidents⁶⁰. A glance through any of Africa's newspapers reveals that accidents happen with depressing regularity because hardly a week goes by without news of a serious road accident in Africa⁶¹.

Accident pictures convey the traumatic impact of dangerous driving to the public and acts as an incentive to the regulatory authorities to make the roads safe for motorists and passengers. Normally, when one boards a vehicle, whether a PSV or a private vehicle, one wonders whether they will reach their destination safe and alive.

The fundamental economics of African travel just like in Zambia is that the transport operators' income is determined by maximizing passenger miles and *hence encouraging over speeding and carrying more passengers than the*

⁶⁰ BBC News. [Why Road Accidents Happen](http://www.news.bbc.co.uk/1/hi/world/Africa). Available on: <http://www.news.bbc.co.uk/1/hi/world/Africa>. Accessed on 20th September 2005

⁶¹ *ibid*

permitted number⁶². The more passengers one ferries, the more miles covered in the shortest period of time, the more money one makes.

Some of the causes of accidents in Africa are narrow roads, drunk driving, over speeding, illiteracy and non-enforcement of traffic laws⁶³. To prove this, all you have to do is to travel in some of those buses plying the capital of Kenya, Nairobi. It may be true that poor roads increase fatality, but then potholes should equally slow down over speeding drivers. However, this does not deter most African drivers from driving dangerously.

Even in Malawi, the three main causes of accidents are excessive speed by the driver, the condition of the vehicle, and road infrastructure, says police officer Henry Banda while checking on the roadworthiness of cars in the capital Lilongwe⁶⁴.

In the Republic of South Africa, speeding and alcohol were two significant factors in increasing the likelihood of traffic accidents⁶⁵.

Like in most of these African countries, a similar situation prevails in Zambia. The question to ask is why have there been an increase in the number of road traffic

⁶² Stranks Jeremy. (1998) Health and Safety Law (3rd ed), London: Pearson Education Publishers p 216

⁶³ BBC News. Africa: Why so many accidents? Available on: <http://www.newsvote.bbc.co.uk/1/hi/talking-point/debates/african/725337.stm>. Accessed on 1st October 2005

⁶⁴ WHO. Southern Africa: Special Report on Road Traffic Injury Prevention. Available on: <http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern Africa>. Accessed on 20th September 2005

⁶⁵ *ibid*

accidents in the recent years? Aren't the traffic regulations sufficient to ensure safety on the roads? Or is there a laxity in the implementation of traffic laws?

This part of the essay will thus answer these questions by discussing the major causes of road traffic accidents in Zambia.

The chapter will also establish that there is a co-relation between the problems encountered by passengers on road transport as infringing their right to life and the causes of traffic accidents.

3.2 WHY ACCIDENTS HAPPEN

The *human element* is the major cause of accidents in Zambia. This implies as used by statisticians to refer to accidents caused by the drivers' behavior in relation to his acts or omissions. The bulk of road traffic accidents, the statistics reveal, are caused by drivers' negligence and error⁶⁶.

The *human element* entails:

- Driving a vehicle upon any road recklessly or in a manner that is dangerous to the public contrary to section 155(1) of the Act⁶⁷;
- Exceeding the prescribed speed limits⁶⁸;

⁶⁶ Central Statistical Office, *Zambian Annual Report, 2004*

⁶⁷ Section 155(1) of the Road Traffic Act, 2002 states "any person who drives a motor vehicle upon any road recklessly or in a manner which is dangerous to the public having regard to the of the case, condition and use of the road...commits an offence ..."

⁶⁸ Section 148(4) (b) of the Road Traffic Act, 2002 provides that no person shall drive a vehicle on a public road at a speed in excess of the general speed limits indicated by an appropriate road traffic sign

- Driving a motor vehicle under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of such a vehicle⁶⁹; and
- Driving a motor vehicle in a state of fatigue and mental tiredness⁷⁰. This normally happens when a driver has been on duty continuously for a very long period of time⁷¹.

Notwithstanding the human element, the other causes of traffic accidents include non-observance of road traffic regulations⁷², carrying more passengers than the vehicle is permitted to carry contrary to section 115(2) of the Act⁷³ and carrying inflammable substances on road passenger vehicles⁷⁴. What is interesting is that all these causes of accidents are offences under the Act.

⁶⁹ Section 157(1) of the Road Traffic Act, 2002.

⁷⁰ Section 119 states “in the case of any public service vehicle or any other vehicle the gross weight of which, with any trailer attached to it, exceeds eighteen thousand kilograms, any person who drives or causes or permits any person employed by that person or subject to that person’s orders to drive in excess of such hours as may be prescribed by the Minister, on the recommendation of the Agency, commits an offence.”

⁷¹ WHO. Southern Africa: Special Report on Road Traffic Injury Prevention. Available on: [http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern Africa](http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern%20Africa). Accessed on 20th September 2005

⁷² Section 170(1) of the Road Traffic Act, 2002 outlines that drivers have an obligation to obey traffic signs

⁷³ Section 115(2) of the Road Traffic Act, 2002 provides that “if, in any public service vehicle, there are more passengers than the vehicle is permitted to carry, the conductor of the vehicle, if any, or, if no conductor is carried, the driver commits an offence and is liable upon conviction to a fine of two hundred penalty units in respect of every passenger carried in excess of the permitted number of passengers”

⁷⁴ Section 196(3) of the Road Traffic Act, 2002 states that “any driver of a public service vehicle or a person in control of such a vehicle who carries petrol or any other inflammable fuel in a public service vehicle commits an offence”

3.3 AN ANALYSIS OF ROAD TRAFFIC ACCIDENTS IN ZAMBIA

In a recent study in Zambia carried out at the University of Zambia (UNZA), it was found that most accidents were caused by over speeding for profit maximization⁷⁵. In other words, drivers deliberately rush so that they could meet their reserve limit for daily takings⁷⁶. It is true that the more passengers one conveys, the faster the speed, the more money one will earn.

But, should people's right to life be sacrificed by excessive speed because of money?

Police reports in Zambia reveal that over speeding is a significant cause of road traffic accidents⁷⁷. At a scene of an accident that happened in Kabwe involving an over speeding Copperbelt bound minibuss from Lusaka which collided with another bus on a road that had been made slippery by the rains, Central Province Police Chief, Robert Nyumbu said: "We just wonder how PSV drivers are conducting themselves on the road. It is clear that they tend to ignore the need to exercise caution, especially when they encounter natural causes of accidents, in this case the rains".⁷⁸

Hence, apart from over speeding, drivers are reckless when they are on the roads and this has contributed to road traffic accidents.

⁷⁵ Mukosha, B. Assistant Public Relations Officer, CBoH, Ndeke House. interviewed on 2nd May 2005

⁷⁶ Moomba, Vitalis. Road Accidents. Times of Zambia. 6th February 2004

⁷⁷ Siandenge, F. District Traffic Officer in an interview conducted at Lusaka Central Police on 16th November 2005

⁷⁸ Djokotoe Edem. "Carnage on the Roads. When PSV Could Mean Death". *Sunday Post*, 25th July 2004

However, the Permanent Secretary of the Ministry of Transport and Communication⁷⁹ cites the biggest cause of road traffic accidents as being the tendency by motorists, both public and private, to ignore road traffic regulations. Mr. Samakai⁸⁰ says most accidents caused by drivers can be attributed to over speeding, drunkenness, recklessness or careless driving and failure to observe traffic signs, among others⁸¹.

The Inspector-General of Police Zunga Siakalima echoes this statement when he comments that "90 per cent of all road traffic accidents are caused by motorist error as a result of failure to observe traffic rules, over speeding, drunk driving and the increasing use of mobile phones by motorists while they drive."⁸²

Accordingly, the problem of road accidents arising from driver negligence from ignoring road traffic regulations should not be underplayed-especially where the accidents involve PSVs because of the number of lives that risk becoming statistics in the event of carnage on the highway.

PSV driver negligence has been a recurrent problem for many years and statistics reveal the extent of driver negligence, the lack of regulation regarding passenger transport and the carriage of dangerous substances like petrol and diesel and paraffin.

⁷⁹ Samakai, B. Permanent Secretary of the Ministry of Transport and Communication in an interview on 10th November 2005

⁸⁰ *ibid*

⁸¹ *Op cit*

⁸² Djokotoe Edem. "Carnage on the Roads. When PSV Could Mean Death". *Sunday Post*, 25th July 2004

Police spokesperson Brenda Muntemba said in an interview “we have noticed this lack of attention by drivers and have linked it to the increasing number of road accidents. Therefore, the government is currently focusing on the behavior of drivers, increasing the age limit for one to qualify as a PSV driver to twenty-five years and the Act has made it an offence for motorists to drive while using cell phones”.⁸³

But are these efforts enough to cut down on the number of road traffic accidents that can be prevented? What the Police Spokesperson seems to forget is that the problem in Zambia has been largely due to enforcement of the regulations and not the law itself.

Thus the answer does not lie in adding more provisions to the Act but in ensuring that the police adequately enforce the provisions of the law. For example, the law prohibiting the carriage of inflammable liquids has long been enshrined in the Act but accidents have continued to occur due to lack of enforcement of these regulations⁸⁴.

⁸³ Police Headquarters, Lusaka. Interviewed on 3rd November 2005

⁸⁴ e.g. the Kapiri Mposhi tragedy involving Jeefaro Coach Services in which almost half of the 35 passengers who died were burnt to ashes in August 2001. In 2003, Mama Mokola, president Mwanawasa’s mother also died in the aftermath of an accident where the vehicle she had boarded was carrying inflammable substances.

Does it then imply that drivers or their proprietors are not aware that carrying inflammable substances on vehicles meant for passengers, over speeding or carrying passengers in excess of the prescribed number contravene sections 196(3), 148(4) or 115(2) of the Act respectively?

The truth however is that drivers and their proprietors indeed know that these acts are offences. However, since the fines and punishment for those who contravene the Act is not deterrent, most of the drivers prefer to disregard traffic regulations in an effort to meet their target daily takings and to adequately provide for their families by making slightly more than what the proprietors require.⁸⁵ Most of the drivers state that they do not find it difficult to pay the fines they are charged by police officers and it is very rare that one is actually imprisoned for committing a traffic offence.

Accidents in Africa are caused by the absence of effective road safety policies and laws. In the UK, careless drivers face jail sentences⁸⁶. In Kenya however, just like in Zambia, a modest court fine could end a long legal process that began with the deaths of many⁸⁷.

⁸⁵ Random interview carried out on drivers at City Market in Lusaka on 1st August 2005

⁸⁶ BBC News. [Africa: Why so many accidents?](http://www.newsvote.bbc.co.uk/1/hi/talking-point/debates/african/725337.stm) Available on: <http://www.newsvote.bbc.co.uk/1/hi/talking-point/debates/african/725337.stm>. Accessed on 1st October 2005

⁸⁷ WHO. [Southern Africa: Special Report on Road Traffic Injury Prevention](http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern%20Africa). Available on: [http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern Africa](http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern%20Africa). Accessed on 20th September 2005

These statements therefore raise many questions about the state of the public transport sector, especially the extent to which operators and drivers alike get away with manslaughter. When a person dies as a result of a road traffic accident, the driver is charged with causing death by dangerous driving under section 161(1) of the Act and this attracts a fine not exceeding thirty penalty units or to imprisonment for a period not exceeding five years⁸⁸.

But just how different is causing death by dangerous driving from manslaughter whose punishment is imprisonment for life⁸⁹. Malice aforethought can be established by proving that the driver knew that the act that has caused death would probably cause death or grievous bodily harm whether such a person is the person actually killed or not...⁹⁰ In the event that the driver of such a vehicle dies, malice aforethought should be transferable to the proprietor of the vehicle.

In this way, the operators of these vehicles would have an obligation to caution the drivers they employ to respect the provisions of the law. This is because the proprietors of PSVs admit that the loss of lives in fatal accidents on the roads would indeed be attributable to drunkenness and over speeding among its bus crews contrary to the provisions of the law.⁹¹

⁸⁸ Section 161(1) of the Road Traffic Act, 2002 provides “any person who causes the death of another person by the driving of a motor vehicle on the road recklessly, or at a speed, or manner which is dangerous to the public...commits an offence...”

⁸⁹ Djokotoe Edem. “Carnage on the Roads. When PSV Could Mean Death”. *Sunday Post*, 25th July 2004

⁹⁰ section 204(b) of the Penal Code CAP 87 of the Laws of Zambia

⁹¹ interview with proprietor of PSV on 1st August 2005

And if police reports are anything to go by, then caution on the roads should be a national priority-on account of the total number of fatalities from road traffic accidents. In 2000, 847 people died in a total of 13,125 road accidents⁹². The year 2002 witnessed a total of 1000 fatalities from 8,855⁹³. By 2003, there were 21,692 road accidents in Zambia, in which 1,046 people were killed and 2,696 seriously injured⁹⁴. These statistics reveal that there has been an increase in the number of road traffic accidents in Zambia.

Mr. Samakai, states that the road accidents being experienced in recent years have been a national disaster⁹⁵

To all these offences and happenings, Deputy Minister of Transport and Communications says the government is concerned at the high number of people who had been killed in road accidents and was therefore eager to bring the avoidable accidents to an end⁹⁶.

Figures from the Central Statistical Office (CSO) also demonstrate that the numbers of accidents have almost doubled in the last thirteen years. For instance, between 1990 and 2003, 13,143 died in road accidents. The Central

⁹² Police Annual Report, 2000

⁹³ Police Annual Report, 2002

⁹⁴ Police Annual Report, 2003

⁹⁵ Samakai, B. Permanent Secretary of the Ministry of Transport and Communication in an interview on 10th November 2005

⁹⁶ Djokotoe Edem. "Carnage on the Roads. When PSV Could Mean Death". *Sunday Post*, 25th July 2004

Board of Health (CBoH) ranks road accidents as the fifth leading cause of death in Zambia today.

Given Zambia's relatively low population and motor vehicle density, it is difficult to understand why Zambia has one of the highest incident rates of accidents in the region. "Is it not surprising that Zambia has one of the highest rates of accidents per kilometer in the region and more than double the rate of deaths caused by road traffic accidents than South Africa, which has a relatively higher population density and motor vehicle density?" Mr. Siakalima⁹⁷ asks.

This chapter has identified drivers' disobedience of traffic regulations as the major causes of road traffic accidents. The lack of effective law enforcement and regulation prevents anything being done about road traffic accidents. The only solution therefore is for passengers to take their safety in their own hands. Chapter four focuses on the problems faced by the law enforcement authorities in implementing the provisions of the Act.

⁹⁷ Inspector-General of Police quoted from Djokotoe Edem. "Carnage on the Roads. When PSV Could Mean Death". *Sunday Post*, 25th July 2004

CHAPTER FOUR

DRAWBACKS TO THE IMPLEMENTATION OF THE PROVISIONS OF THE ROAD TRAFFIC ACT, 2002 IN AN EFFORT TO PROTECT THE RIGHTS OF PASSENGERS

4.1 INTRODUCTION

The Roads and Road Traffic Act, 2002 creates a number of road traffic offences. Notwithstanding, the persistent occurrence of these offences is mainly due to the inadequacy of enforcement regulations by the agency with the mandate to curb these offences that have led to the increasing number of road traffic accidents in Zambia. Although the Act has numerous provisions dealing with traffic offences, this chapter will only outline the difficulties encountered when addressing the problems of over speeding, drunken driving, carrying inflammable substances and carrying passengers in excess of the permitted number. This is because these have been identified as the major causes of road accidents in Zambia⁹⁸.

The causes of lack of enforcement to be discussed are inadequate transport, lack of equipment, poor conditions of service, lack of legislative power and the construction of certain provisions. However, it is imperative to state at this juncture that it is not possible to enforce all the provisions of the Act. As Quinney⁹⁹ asserts, "the full enforcement of criminal law, however, is not a

⁹⁸ Chapter three of the essay

⁹⁹ Quinney, R. (1970) The Social Reality of Crime. London: Boston Publishers, p105

realistic expectation. Numerous limitations and circumstances preclude the possibility of enforcing the law to the fullest extent”.

To begin with, he identifies procedural restrictions as prohibiting the enforcement of the law beyond the lawful rights of the individual citizen.

Secondly, the wide latitude for differing interpretations is also a shortcoming resulting primarily from ambiguity in the wording of any statute, and hence permitting much freedom in what is to be considered as constituting a criminal offence.

Finally, some technical difficulties confound the enforcement of law. This includes limitations such as the number of trained police personnel, available time, the number of personnel and equipment in the detection and investigation of crime¹⁰⁰.

The chapter will show how the limitations stated above have contributed to lack of enforcement of the provisions of the Act.

4.2 EXCESSIVE SPEED

Section 148 of the Act proscribes over speeding.¹⁰¹ For one to be charged under this section, it must be proved that one exceeded the permitted speed limits by a

¹⁰⁰ *ibid*

¹⁰¹ Section 148(1) (a) of the road traffic act provides that “the general speed limit in respect of every public road or section thereof situated within the area of a local authority...;”

Section 148(2) states, “an appropriate road traffic sign, set by the agency may be displayed on any road indicating a speed limit other than the general speed limit which under sub section (1) applies in respect of that road...”

¹⁰¹ section 148(4) no person shall drive a vehicle on a public road at a speed in excess of-

considerable degree of permitted kilometers per hour¹⁰². It should also be proved that the road had a high frequency of road users or that the nature of the road is such that driving at a high speed poses a danger to the public who use it or who are at the sides of the road¹⁰³. It will accordingly be shown how the lack of speed traps has made it difficult to enforce the provision of the law in relation to excessive speed.

4.2.1 Lack of Speed Traps

For the police to detect who is over speeding, there is need to utilize speed traps. From an interview carried out from police headquarters in Lusaka, it was found out that speed traps are available but they are not in good working condition. Mr. F. Siandenge¹⁰⁴ says this has contributed to the high prevalent rate of over speeding vehicles. "The speed traps are defective and hence there is no incentive on our part to use such defective equipment, which may even stop functioning whilst one is on duty", he says.

Accordingly, without the vital equipment to enforce the regulation dealing with over speeding vehicles, there is nothing that the police have been demoralized

(a) the speed limits under subsection (1) applies in respect of that road;
(b) the limit indicated under subsection (2) by an appropriate road traffic sign, set by the agency in respect of that road; or
(c) the speed limit prescribed by the Minister, in consultation with the Agency, under subsection (3) in respect of the class of vehicle concerned.

¹⁰² section 148(4) of the Road Traffic Act, 2002.

¹⁰³ *ibid*

¹⁰⁴ District Traffic Officer (DTO) Lusaka Central Police. Interviewed on 15th November, 2005.

as there is nothing that they can do¹⁰⁵. In this way, the lack of equipment continues to contribute to the road carnage in Zambia.

4.3 DRUNKEN DRIVING

Section 157(1) of the Act provides that “any person who driving or attempting to drive a motor vehicle on an road, is under the influence of intoxicating liquor or narcotic drugs to such an extent as to be incapable of having proper control of such vehicle commits an offence and is liable upon conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a period not exceeding five years, or to both.”

The Act further provides that “any person licensed to drive a public service vehicle who, at any time within six hours before the time at which he is due to take charge of the vehicle in respect of any journey, by the consumption of intoxicating liquor renders himself incapable of taking proper control of a motor vehicle, shall be guilty of an offence...”¹⁰⁶

Notwithstanding, the construction of these provisions, the lack of supportive legislation and lack of transport facilities has limited the enforcement of the law.

4.3.1 Construction of the Provisions

From the literal interpretation of these sections, one notes that a driver of a motor vehicle who is drunk, but is capable of driving would not be capable of being convicted under section 157(1) of the Road Traffic Act, 2002. This is because the

¹⁰⁵ Mr. C.M. Lusambo, Road Traffic Officer, Lusaka Central Police Station. Interviewed on 15th November, 2005

¹⁰⁶ Section 118(2) of the Road Traffic Act 2002

Act proscribes such a driver as capable of having proper control of the vehicle as opposed to incapacity of having proper control of the vehicle. Accordingly, it can be postulated that the Act does not deter any driver from consuming alcohol or drugs whilst driving and hence the consequent increase in the cases of road traffic accidents caused by drunkenness.

In addition, for one to be successfully convicted for drunken driving, there are certain conditions to be fulfilled which act such limitations in the enforcement of the regulations.

Firstly, there is a requirement that a prescribed officer should subject such an accused person to a medical examination to be conducted by a medical practitioner¹⁰⁷. Hence, in Mason Mwale v. The People¹⁰⁸, the appellant who was convicted of drunken driving was acquitted because there was no evidence to prove that the medical officer who had carried out the examination was a medical practitioner as defined by section 158(7) of the Act.¹⁰⁹

In this case the court held that the doctor in question who conducted the medical examination was not a medical practitioner. Therefore the appeal was allowed and the conviction set aside.

¹⁰⁷ section 158(1) of the Road Traffic Act, 2002

¹⁰⁸ [1998] ZR 76

¹⁰⁹ a medical practitioner means a person registered on the register of fully registered, provisionally registered or temporary registered medical practitioners under the Medical and Allied Professions Act.

Quinney who as noted above asserts that judicial interpretations have a restriction on the effective enforcement of criminal law thus adequately echoes this limitation¹¹⁰.

4.3.2 Lack of Supportive Legislation and Qualified Personnel

When a person who has been intoxicated with intoxicating liquor is detained, the medical practitioners use a breathalyzer to detect the alcohol content in such a person's blood or urine.

The police have also acquired this device but they have been unable to use these breathalyzers¹¹¹. This has not only been caused by lack of qualified police personnel trained to conduct such an examination but also due to the non-availability of any legislation that allows them to use this device. Under section 158(2) of the Act, it is only the medical practitioners who have the authority to conduct the relevant tests to detect the alcohol content of such a driver.

Thus, despite having the equipment, the police have been incapacitated to effectively combat drunken driving cases because of the absence of statutory support for their action in conducting the test. Empowering the police service to carry out these tests would be more efficient compared to the cumbersome procedure of taking such a driver to a hospital for an examination.

¹¹⁰ Quinney, R. (1970) *The Social Reality of Crime*. London: Boston Publishers, p105

¹¹¹ Siandenge, F. Division Traffic Officer, Central Police, Lusaka. Interviewed on 15th November 2005

4.3.3 Lack of Transport Facilities

The police service is one wing of the government that operates under very poor conditions-poor housing, salaries and inadequate funding¹¹². Thus, even when the police would want to do their duties as prescribed by the Act, the police service are limited in their operations due to inadequate transport facilities. The problem of rising car accidents is impounded by the fact that the police, who are supposed to ensure the observation of traffic rules, are not doing their duty due to the non-availability of transport¹¹³. In fact the police drive very defective cars.

In the early days of our independence, Dr. K. Kaunda stated that the police operate under very severe conditions. 'I am aware of the difficulties under which the police operate like poor housing, lack of transport and inadequate equipment.'¹¹⁴

Last year, the Permanent Secretary of the Ministry of Transport and Communications also alluded to the problem of transport facilities in the police service when he stated that the police need vehicles for patrolling services¹¹⁵.

¹¹² WHO. Southern Africa: Special Report on Road Traffic Injury Prevention. Available on: <http://www.irinnews.org/S-report!asp?ReportID=41686&SelectRegion=Southern Africa>. Accessed on 20th September 2005

¹¹³ *ibid*

¹¹⁴ Daily Mail 4th February, 1984.

¹¹⁵ Samakai, B. Interviewed on 10th November 2005

An interview carried out at Police Headquarters¹¹⁶ indeed reveals the sad reality of this situation. Despite this, the police are doing all they can with the few vehicles available.

As a result, it has been almost impossible for the police to track down the majority of cases that contravene the provisions of the Act especially drunken driving cases which mostly occur in the night after people have relaxed from their busy scheduled day¹¹⁷

“Imagine, once two vehicles are patrolling one area, there are no other vehicles to patrol the other areas”, says Mr. Lusambo¹¹⁸. In other instances however, there is no fuel to conduct patrolling services. Hence, lack of transport facilities has largely hindered the enforcement of the traffic regulations.

4.4 CARRYING MORE PASSENGERS THAN THE PERMITTED NUMBER

Section 115(2) of the Act states that “if in any public service vehicle, there are more passengers than the vehicle is permitted to carry, the conductor of the vehicle, if any, or, if no conductor is carried, the driver commits an offence ...”

4.4.1 Poor Conditions of Service

Carrying passengers in excess of the permitted number is the only problem that the police can adequately deal with on roadblocks. Notwithstanding, the police are easily bribed to overlooking this problem including major defects noticed on

¹¹⁶ Muntamba, B. Police Spokesperson, Police Headquarters, Lusaka. Interviewed on 3rd November 2005

¹¹⁷ Lusambo. Road Traffic Officer. Central Police, Lusaka. Interviewed on 15th November 2005

¹¹⁸ Road Traffic Officer, Lusaka Central Police Station. Interviewed on 15th November, 2005

public service vehicles. This is mainly attributable to the fact that the conditions of service for the police are pathetic. 'Why should I impound a vehicle when I can easily raise money right there and then to feed my family through a bribe?' asks a policeman.

The police have accordingly been rated to be amongst the most corrupt agencies in Zambia¹¹⁹. With poor conditions of services, corruption between bus drivers and police officers has been exacerbated.

However, what the police forget is that it is these little things that when ignored create major problems and hence an increase in road accidents.

However, the Division Traffic Officer¹²⁰ attributed the problem of overcrowding on the buses to the passengers themselves whom he says do not know their rights. "You may even wonder why a passenger who has been on his feet and has paid a full fare will agree to squatting on the floor of a bus when such a vehicle approaches a road block."

In certain instances, the passengers will just start screaming that the police are delaying their journey or that the police just want money through bribes. "This is very frustrating and discouraging. What people forget is that we are rendering a

¹¹⁹ WHO. Southern Africa: Special Report on Road Traffic Injury Prevention. Available on: [http://www.irinnews.org/S-report!asp?ReportID=41686\\$SelectRegion=Southern Africa](http://www.irinnews.org/S-report!asp?ReportID=41686$SelectRegion=Southern%20Africa). Accessed on 20th September 2005

¹²⁰ Siandenge. District Traffic Officer, Lusaka Central Police Station. Interviewed on 15th November, 2005

service and hence once we find a motor vehicle wanting, it has to be impounded”¹²¹.

Notwithstanding, it is the duty of the police to ensure that they deal with drivers who contravene the law by carrying more passengers in excess of the permitted number by setting up efficient and effective roadblocks. On one hand, even where the police direct the bus to the police station and impound it until the owner pays the required fine; the operators on the other hand have no difficulties paying the low fines as they make a lot of profit. Accordingly, this rarely deters the offenders from carrying more passengers than the permitted number as outlined in section 115(2) of the Act¹²².

The enforcement of the provisions of the Act is weakened by the fact that the road traffic law enforcement wing has virtually no equipment such as vehicles, speed traps and statutory power to effectively enforce the road traffic regulations. Drivers are therefore not deterred from disobeying road traffic laws. Thus, ‘the same Zambian drivers, once they cross the borders, obey the road traffic laws in the foreign countries to the letter and have built a reputation of being good drivers, especially the PSV drivers’¹²³.

¹²¹ Siandenge, F. District Traffic Officer, Lusaka Central Police Station. Interviewed on 15th November, 2005

¹²² *supra* note 19

¹²³ Mr. Samakai, Permanent Secretary of the Ministry of Transport and Communications. “Carnage on the Roads.” *Sunday Post*, 25th July

While it is difficult to enforce all the provision of the law, it only necessary that the concluding chapter of the essay proposes certain legislative enactments and amendments that would be very relevant to ensure that these problems are dealt with to minimize road traffic accidents and consequently ensure that passengers' lives are preserved.

CHAPTER FIVE

LEGISLATIVE ENACTMENTS TO ADDRESS THE RIGHTS OF A PASSENGER

5.1 INTRODUCTION

Having analyzed the provisions of the Act that address passengers' rights, it is only imperative that this chapter of the essay recommends certain legislative enactments to enhance these rights. This will help to reduce the prevalence of road traffic accidents in Zambia that in most cases curtail a passengers' right to life. The enactments will be proposed taking into account the major causes of accidents in Zambia as shown in chapter three and the problems that passengers face on road transport discussed in chapter two.

5.2 RECOMMENDATIONS

(i) The Road Traffic Act, 2002 authorizes medical practitioners to examine the blood and urine samples of the driver who is suspected to be incapacitated by intoxicating liquor or drugs. This has raised a number of problems in that most cases of drunken driving are either ignored due to the cumbersome procedure of taking such a driver to a hospital for the test in question compounded with transport problems on the part of the police¹²⁴. In addition, the test may not even be done on the same day the driver is arrested.

¹²⁴ chapter four of the essay

Consequently, by the time a medical practitioner attends to such a case, the alcohol content in such a person's blood or urine may have dropped to levels where such a person may not be charged for driving while intoxicated.

Additionally, the Act makes it a condition that a medical practitioner should perform the tests, if any other person carries out the test, the case will be disposed of for procedural impropriety as seen in the case of Mason Mwale v. The People¹²⁵.

Hence, it proposed that the Act should empower the police to use breathalyzers like it is done in the United Kingdom.¹²⁶ This will help the police to sufficiently deal with drunken driving cases. These tests can also be performed on roadblocks or before a driver leaves a station whenever the police suspect that a driver has been incapacitated by the consumption of alcohol or drugs contrary to section 157(1) of the Act.

For this provision to be very effective, the use of breathalyzers must be incorporated into the training of police recruits so that skilled personnel are produced.

¹²⁵ (1998) ZR 76

¹²⁶ Section 2(1) of the English Road Safety Act empowers a constable in uniform to require any person driving or attempting to drive a motor vehicle on a road or any other public place to provide a specimen of blood and urine for test

(ii) It is proposed that sections 118¹²⁷ and 157¹²⁸ of the Act must be reconciled. On one hand sub-section (1) of section 118 creates an offence for a driver who buys and consumes intoxicating liquor while on duty whilst on the other hand, section 157(1) of the Act states that driver only commits an offence when he is under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the vehicle.

The question raised by these sections is, is it the consumption of alcohol while on duty that is an offence as provided for in section 118(1) or is it the consumption of alcohol to such an extent as to be incapable of taking proper control of the vehicle as stated in section 157(1) of the Act? It is therefore submitted that section 157(1) be amended so that the words "...to such an extent as to be incapable of having proper control of the vehicle..." be deleted.

This is because from the interpretation of the section, it is deducible that the consumption of alcohol is all right for as long as one is able to take proper control of the vehicle. This in itself encourages alcohol consumption when a person is on

¹²⁷ Section 118(1) of the Road Traffic Act, 2002 states "any person who knowingly sells or supplies any intoxicating liquor or narcotic drugs to any driver of a public service vehicle, while such driver is on duty, and any such driver who buys or consumes intoxicating liquor while on duty commits an offence..."

Section 118(2) of the Road Traffic Act, 2002 states "any person licensed to drive a public service vehicle who at any time within six hours before the time at which that person is due to take charge of a public service vehicle in respect of any journey renders oneself incapable of taking proper control of a motor vehicle, by the consumption of intoxicating liquor, commits an offence..."

¹²⁸Section 157(1) of the Road Traffic Act, 2002 provides "any person licensed to drive a public service vehicle who, at any time within six hours before the time at which he is due to take charge of a public service vehicle in respect of any journey, by the consumption of intoxicating liquor renders himself incapable of taking proper control of a motor vehicle, shall be guilty of an offence and shall be liable upon conviction, in the case of a first offence, to a fine not exceeding five hundred penalty units or to imprisonment not exceeding six months and in the case of a second or subsequent offence to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding one year, or to both".

duty. The section also creates a good defense for drunk drivers to plead that they were able to take proper control of the vehicle when they were only able to take control of the vehicle. In addition, who is to determine when a driver is merely taking control of the vehicle and when such a driver takes proper control of the vehicle? Thus, the Act must prohibit the consumption of alcohol for public service vehicle drivers while they are on duty. The issue of one being rendered incapable must not even be considered.

(iii) Having regard to the fact that most road traffic accidents are caused by driver recklessness necessitated by profit maximization, it is proposed that causing death by dangerous driving must be treated like manslaughter. This is because there is no justification for the distinction between manslaughter and the offence created under section 161(1) of the Act¹²⁹. The actus reus under this offence must be driving recklessly and this must include driving while intoxicated, over speeding, carrying inflammable substances and carrying more passengers than the stated number.

Malice aforethought can be established by proving that the driver knew that the act that has caused death would probably cause death or grievous bodily harm whether such a person is the person actually killed or not...¹³⁰

¹²⁹ Section 161(1) of the Road Traffic Act, 2002 provides “any person who causes the death of another person by the driving of a motor vehicle on the road recklessly, or at a speed, or manner which is dangerous to the public...commits an offence...”

¹³⁰ Section 204(b) of the Penal Code CAP 87 of the Laws of Zambia

In the event that the driver of such a vehicle dies with the victim, malice aforethought must be transferable to the proprietor of the vehicle. This provision will entail that bus operators will employ only qualified drivers who must be cautioned on the need to observe road traffic regulations.

(iv) The law must stiffen the provision relating to boarding an already full vehicle by authorizing the police to make a passenger who has boarded into such a full vehicle to disembark. Such a provision will not only proscribe the carriage of passengers in excess of the permitted number but it will also ensure that passengers do not enter vehicles that are already full for fear of being inconvenienced contrary to section 115(3)¹³¹.

(v) In relation to the punishment for the offences under the Act, it is proposed that more severe punishment must be introduced for contravening the provisions of the Act.

(vi) The roadworthiness of some PSVs is indeed questionable and one question is whether some vehicles do have valid certificates of fitness issued by a vehicle examiner as postulated in section 122 of the Act. Thus, it is recommended that the procedure for licensing a PSV be performed by a board composed of main passengers and the decision to grant such a certificate must be by a majority vote. This will prevent the usage of wrecked vehicles that have found their way into Zambia as PSVs for the carriage of passengers.

¹³¹ "If any person being requested by the conductor or driver of the public service vehicle not to enter the vehicle enters or attempts to enter the vehicle when it is carrying the full number of passengers which it is permitted to carry, he shall be guilty of an offence."

(vii) The Act must also create a fast track tribunal with a toll free number to deal with road traffic cases and complaints especially those involving the carriage of more passengers than the prescribed number, carrying inflammable substances, drunken driving and excessive speeding. In this way, people will be encouraged to report drivers who contravene the law because road traffic cases will be dealt with urgently since justice delayed is justice denied.

CONCLUSION

Transport and communication plays a vital role in national development. As Zambia is trying to encourage tourism and investment in an effort to diversify the economy, it is imperative that the dark image of carnage on the Zambian road be wiped.

The Road Traffic Act, 2002 was enacted to enhance road safety among other things by providing for the rights of passengers. The essay has accordingly reviewed the relevant provisions of the Act that addresses these rights. The problems faced by passengers on public transport have been highlighted and include excessive speed, carrying passengers in excess of the permitted number and drunken driving. These problems have been established as the causes of accidents in Zambia. However other causes of accidents include driver recklessness and carrying inflammable substances.

Whilst acknowledging that it is not possible to implement all the provisions of the law, the essay addressed the difficulties encountered by the law enforcement authorities when implementing the provisions of the law. These difficulties are poor conditions of service, the construction of the provisions of the Act and lack of statutory provisions to enforce certain regulations, equipments and lack of transport facilities. Consequently, legislative enactments and amendments have been suggested to enhance the rights of passengers.

However, the importance of life has not yet been fully realized to allow for the provisions of the law to be effectively enforced.

In all this, the will of the government is important. Thus Dr Kenneth Kaunda, in his capacity as patron for Child Safety Trust Fund (CSTF) says "...the death of children in accidents should serve as a wake up call for government to do something about the growing menace of passenger transport for the public good"¹³².

Hence, the government needs to play a major role if the prevalence of accidents is to be reduced. The police wing needs to be sufficiently funded so that they can purchase the relevant equipment and their conditions of service improved so that they are not prone to corruption. In addition, the passengers must be active to ensure that the provisions of the law are respected by reporting cases that are found wanting.

This can only happen when the passengers become knowledgeable of the provisions of the Act that will help preserve their right to life because whenever one embarks on a bus the possibility of becoming a statistic is very high. Thus, it is vital for the government to release funds to educate the public. The proposed legislative enactments will only be effective with every person's participation. As it is said, Rome was not built in a day!

¹³² Djokotoe, Edem. "Carnage on the Roads." *Sunday Post*, 25th July

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