

**A CRITIQUE ON KENYA'S TRAFFIC LEGISLATION AND ITS  
DETERRENCE FROM TRAFFIC OFFENCES**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree,  
Strathmore University Law School

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FEBRUARY 2017

## DECLARATION

I, JOY MUTHONI MUROKI, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

MUKAMI WANGAI

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## **DEDICATION**

To Braxton Ddaddah, I know you are cheering from heaven.

## **ACKNOWLEDGEMENTS**

I take this opportunity to thank Dr. Luis Franceschi and the wonderful members of the faculty, for the unwavering support and unmeasurable investment in my future. I am indebted to my supervisor Mukami Wangai, for her guidance and support even when it seemed impossible. I must thank my family, both immediate and extended for being my inspiration and cheering team. I would be remiss if I did not thank God for the countless opportunities I have been blessed with.

“Ad Illos Mecum Vadant,” a Latin phrase that translates to, ‘for those who walk with me’. Everyone, whether named here or unnamed, if you were there for the entire journey or any portion thereof, please accept my profound and heartfelt thanks.

## **ABSTRACT**

The purpose of this dissertation is to examine the national traffic legislation enacted within Kenya and the law enforcement organisations that implement them. The reason for analysing the laws is aimed at critiquing their effect in deterring motorists from committing specific traffic offences.

This paper studies the various schools of thought on criminal deterrence with a focus on traffic legislation. It starts with the principles of utilitarianism which are founded on the belief that human beings act in a hedonist and rational manner. Moreover, other multi-disciplinary aspects of deterrence are also discussed relevant to the occurrence of traffic crimes.

The research carried out examines the effect of penalties imposed by Kenya's traffic laws on motorists and comparatively analyses the traffic laws of Denmark and their enforcement, which are considered to be some of the world's leading in deterring motorists from committing traffic offences.

## **LIST OF ABBREVIATIONS**

|       |  |
|-------|--|
| NTSA  | National Transport and Safety Authority        |
| PSVs  | Public Service Vehicles                        |
| NHTSA | National Highway Traffic Safety Administration |
| DRSC  | Danish Road Safety Commission                  |
| DPS   | Demerit-Point-System                           |
| NPS   | National Police Service                        |

## LIST OF CASES

*Shah v Republic* (1969) EA 197

*Pyarali v Republic* (1971) EA 169

*R v Hennigan* (1971) 3 All ER 133

*Republic v Evans* (1963) 46 Cr App R 62

*Atito v Republic* (1975) EA 281

*Orweryo Missiani v Republic* (1979) KLR 285

*Thoya v Republic* (2000) eKLR

*Govid Shamji v Republic* (1975) EA 119

*Republic v Guilfoyle* (1973) All ER 844

*Alfred Sutton v R* (1957) EA 812

## **LIST OF FIGURES**

Figure 1: A drop in the number of people injured and killed as a result of drunk driving accidents between 2011 and 2012

## CHAPTER ONE: INTRODUCTION

### 1.1 Background of the study

Road accidents have been identified as a major cause of death in the twenty-first century. Research estimates indicate that approximately 1.3 million people die every year in road accidents around the world. Deaths and injuries caused by road accidents create significant social, economic and health costs on a country's economy<sup>1</sup>. It has been stated that if traffic volume and road accidents continue increasing at their present rate there will be a global frequency of one serious accident per second, and one fatality per minute by the year 2020.<sup>2</sup>

Throughout the years, the improvement and development of transportation has facilitated the increased mobility of individuals. Fortunately, this has made the 'human operator' a key and vital element in the transportation system, which due to this reliance the role of human error has been identified as one of the major contributing factors of road accidents.

Kenya is one of the countries in Africa with a higher death toll resulted in road accidents compared to deaths caused by malaria. In 2015, the World Health Organization released a report on the Global Status on Road Safety which provided that around 1.25 million people die each year as a result of road traffic crashes, despite improvements in road safety.<sup>3</sup> Kenya, Rwanda and Tanzania were ranked amongst the worst ten performers, in terms of fatalities in Africa, with 29.1, 32.1 and 32.9 deaths per 100,000 people respectively.<sup>4</sup>

In order to deal with road accidents, as well as other traffic offences, Kenya's Judiciary and National Police Service (NPS) released new regulations aimed at reforming the manner in which traffic offences are handled both by the courts and by the police. The new regulations focus on the management of traffic offences to curb corruption involving police and traffic courts,<sup>5</sup> which were recommended by key stakeholders in the justice and transport sector, such

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<sup>1</sup> Zaal D, 'Traffic Law Enforcement: A Review Of The Literature' Monash University Accident Research Centre, 1.

<sup>2</sup> Michon J. A., 'Traffic Psychology' invited address given at the International Congress of Applied Psychology, Kyoto, Japan, 1990.

<sup>3</sup> Redfern P, 'Kenya Road Death Toll Amongst the Highest Globally' Daily Nation, 25 October 2015 <<http://www.nation.co.ke/news/Kenya-road-death-toll-among-the-highest-globally/-/1056/2929110/-/k1xjtsz/-/index.html>> on 20 February 2016.

<sup>4</sup> Redfern, 'Kenya Road Death Toll Amongst the Highest Globally' Daily Nation, 25 October 2015.

<sup>5</sup> Bilal N, 'Judiciary and Police Release New Regulations to Manage Traffic Cases' *Judiciary.go.ke* (2015) <<http://www.judiciary.go.ke/portal/blog/post/judiciary-and-police-release-new-regulations-to-manage-traffic-cases>> on 20 February 2016.

as the Special Working Group on Traffic, the National Transport and Safety Authority (NTSA) and Kenya Association of Motorists among others.<sup>6</sup>

The enforcement of the new traffic regulations together with the Traffic Act, Cap 403 are aimed at reducing the number of traffic offences within the country by reducing all bureaucracy in traffic cases, and instituting serious sanctions with regard to serious offences such as causing death by dangerous driving, driving under the influence of alcohol, and driving over the speed limit.<sup>7</sup>

## **1.2 Statement of the Problem**

The aim of this paper is to determine whether the threat or imposition of punishment provided for by Kenya's traffic legislation, both the Act and the new regulations, are proportional to the severity of the offences<sup>8</sup> and whether their enforcement and implementation has led to deterrence from committing a traffic offence, as well as reducing road fatalities.

## **1.3 Justification of the Problem**

There is a lot of information relating to traffic laws and how they impact a society. However, this information is founded on different socio-economic factors from an international perspective regarding Kenya.

This research paper is justified because of the scarcity of information regarding traffic legislation as a means of deterrence within the Kenyan context. This is because, laws being legislated, though beautiful and well written, are a replica of traffic laws from other countries and their implementation, if any, is left wanting. Due to this top-down approach of enacting legislation, they are difficult to enforce as there are no systems in place to do so.

## **1.4 Objectives of the study**

### **1.4.1 General Objective**

The general objective of this paper is to critically analyse Kenya's traffic legislation and determine the effect of the enforcement of the laws as depicted by the current state of road safety.

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<sup>6</sup> Bilal, 'Judiciary and Police Release New Regulations to Manage Traffic Cases', 2015.

<sup>7</sup> Bilal, 'Judiciary and Police Release New Regulations to Manage Traffic Cases', 2015.

<sup>8</sup> Offences include: causing death by dangerous driving or obstruction, driving under the influence of alcohol, and driving over the speed limit.

### **1.4.2 Specific Objective**

The specific objective of this paper is to determine whether the laws in relation to serious offences, which include causing death by dangerous driving or obstruction, driving under the influence of alcohol, and driving over the speed limit are effective and efficient in dealing with them.

### **1.5 Research Questions**

1. Are the penalties imposed by traffic legislation within Kenya effective in influencing the behaviour of road users?
2. What factors hamper the enforcement of traffic rules and regulations?

### **1.6 Hypothesis**

The proper enforcement and implementation of enacted traffic legislation can deter the commission of traffic offences and lower road fatalities.

### **1.7 Theoretical Framework**

The classical school philosophers founded their arguments on the principles of utilitarianism which were that punishment of sufficient severity, can deter people from participating in criminal activities, as the penalties outweigh the benefits, and that, severity of punishment should be proportionate to the crime.<sup>9</sup> This is founded on the belief that human beings generally act in a hedonistic and rational manner. Classical utilitarian's reason that the threat or imposition of punishment leads to a reduction in crime because, in Bentham's words, "pain and pleasure are the great spring of human action," and "in matters of importance every one calculates."<sup>10</sup>

In addition, the rational choice theory also forms a basis for the argument presented by this paper. Philosophers including Thomas Hobbes, Cesare Beccaria, and Jeremy Bentham argued that punishment, if certain, swift, and proportionate to the crime, was a deterrent for crime, with risks outweighing possible benefits to the offender. Therefore, this theory argues that criminals, like ordinary people, weigh the costs and benefits when deciding on whether to commit a crime, and think in economic terms.<sup>11</sup>

Further, due to the multi-disciplinary aspect of deterrence from traffic offences, sociology-based theories are also relevant to this paper as they depict the social aspect of the traffic crimes.

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<sup>9</sup> Beccaria C, *Dei Delitti e Delle Pene [Of Crimes and Punishments]*, Marsilio Publishers, 1996.

<sup>10</sup> Bentham J, 'An Introduction to the Principles of Morals and Legislation' ,1843.

<sup>11</sup> Cornish D, and Ronald V. C, 'The Reasoning Criminal' *Springer-Verlag*, 1986.

The strain theory,<sup>12</sup> argues on the effects of social structures within society. It reinforces the idea that individuals either cannot achieve the goals that society most values, or are reduced to employing anti-social means to achieve them.<sup>13</sup> This theory therefore, suggests that good driving behaviour is programmed into motorists and can be overridden when individuals feel pressured to avoid tardiness at all costs and still meet nearly simultaneous obligations in geographically disparate locations, as well as for other reasons.<sup>14</sup>

## **1.8 Literature Review**

A poll conducted by Ipsos Synovate in July 2012,<sup>15</sup> revealed that majority of Kenyan road users do not take responsibility for their own safety on the roads, but rather leave that role to the police and the government. The study found that causes of accidents can be grouped into five categories. They include, irresponsible motorists, poor road conditions, pedestrian recklessness, use of vehicles that are not roadworthy, and poor enforcement of traffic laws.<sup>16</sup>

The Traffic Act, 2012 has criminalized a number of activities on the road in order to provide a regulatory framework that is to be adhered to by all road users. Section 42 (1) of the Act has criminalized driving of a vehicle at a speed that is greater than the maximum speed prescribed for that class of vehicle. The offence of driving under the influence of drink is established under section 44 (1) of the Traffic Act. Further, causing death by dangerous driving or obstruction is an offence as per section 46 of the Traffic Act, however there are specific requirements for a motorist to meet so as to be guilty of the offence.

### **1.8.1 Deterrence of Traffic Penalties**

Cesare Beccaria and Jeremy Bentham posited that punishment was aimed to use measures of proven effectiveness, therefore, it was to be no more severe than necessary to deter proscribed behaviours. Paternoster and Bachman,<sup>17</sup> found deterrence mechanisms affect behaviour in

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<sup>12</sup> Agnew R, *Foundation for a General Strain Theory* Criminology 30(1), 1992, 47-87.

<sup>13</sup> Merton R.K, 'Social Theory and Social Structure' rev. ed. New York: Free Press, 1957.

<sup>14</sup> Falinski G. L, 'The Deterrent Effect Of Traffic Enforcement On Ohio Crashes, 1995-2004', Kent State University, 2009, 30.

<sup>15</sup> Ipsos Synovate, 'Majority of Kenyans Do Not Take Personal Responsibility for Road Safety', 2012, 1 -7 <[http://www.ipsos.co.ke/spr/downloads/lifestyle\\_issues/Road%20Safety\\_Majority%20of%20Kenyans%20do%20not%20take%20personal%20responsibility%20for%20road%20safety%20\(October%202012\).pdf](http://www.ipsos.co.ke/spr/downloads/lifestyle_issues/Road%20Safety_Majority%20of%20Kenyans%20do%20not%20take%20personal%20responsibility%20for%20road%20safety%20(October%202012).pdf)> on 20 February 2016.

<sup>16</sup> Ipsos Synovate, 'Majority of Kenyans Do Not Take Personal Responsibility for Road Safety', 2012, 6.

<sup>17</sup> Paternoster R, Bachman R, *Explaining criminals and crime: Essays in contemporary criminological theory*, Roxbury Publishing Company, 2001.

various ways, therefore creating classification on the different forms of deterrence. They include:

a. General Deterrence

This happens when a potential wrongdoer who is aware of the punishment of others, avoids the same punishable behaviour. If a motorist witnesses the police stop a car ahead of theirs, they will tend to also slow down to avoid a similar occurrence, hence general deterrence has taken place among the others.

b. Absolute Deterrence

This is whereby a wrongdoer is prevented from engaging in future illegal actions. Capital punishment, for instance, prohibits individuals from undertaking in illegal acts once they are executed. Therefore, creating absolute deterrence from any future acts of homicide.

c. Specific Deterrence

In situations where a felon, after being punished once for a certain act avoids the behaviour that resulted in the punishment has undergone specific deterrence. After receiving a traffic summons for speeding, an individual tends to drive within the authorised speed limits.

d. Restrictive deterrence

This is in reference to where a criminal, after being punished just reduces the frequency of the activity rather than stopping it all together. An individual, after being punished for speed, still exceeds the speed limit, but less often than before being punished.

However, in as much as punishment is intended to deter a person's behaviour, Sherman,<sup>18</sup> in his study of defiance found that arrest was likely to deter future offences among the employed, but was not effective on those unemployed. He argued that punishment for offences prove to be counterproductive if they are perceived to be unfair to the lower social class, or if the recipient perceives pride and rather than shame in the punishment.

## **1.9 Research Methodology**

This study will take a qualitative approach to analyse the effect of traffic legislation as a measure of deterrence from criminal offences. The means employed will include library research aimed at analysing and interpreting the Traffic Act, Cap 403, the new regulations to manage traffic cases, and scholarly writings on the effect of traffic legislation as a deterrence to traffic offences.

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<sup>18</sup> Sherman L. W, 'Defiance, Deterrence, And Irrelevance: A Theory of the Criminal Sanction' 30 Journal of Research in Crime and Delinquency, 1993, 448.

In addition, electronic sources will be employed through the use of various websites as well as the online libraries that will constitute relevant materials such as online articles, journals, working papers and reports.

### **1.10 Limitations**

This paper, focusing on the deterrence of traffic legislation will be limited to the findings arrived at through qualitative analysis. Therefore, given the degree of variations in large geographic areas the assessment of individual behaviour and group effects will not be achieved.

### **1.11 Chapter Breakdown**

#### Chapter One: Introduction

This chapter will set out the foundation for the research paper. It will set out the purpose and significance of the study, with regard to the effect that traffic legislation has in deterring individuals from committing traffic offences. It will provide any assumptions that the researcher has in relation to the study, and the limitations they will face in carrying out the research

#### Chapter Two: Theoretical Framework

This chapter will review and compare theories that attempt to explain the deterrence theory. It will be organized and discussed in depth, to describe and evaluate in detail the various literatures and theories consulted in research of the problem.

#### Chapter Three: Analysis on Kenya's Legal Framework on Traffic Laws

This chapter will discuss Kenya's traffic laws and other relevant rules and regulations. Further, it will consider the legal body of the NTSA and its role as an enforcer of legislation to reduce or stop the commission of traffic offences.

#### Chapter Four: A Study of Denmark's Traffic Legislation

This section of the paper will focus on the traffic laws of Denmark as a comparison for Kenya's laws. It will provide a basis for the conceptualization of the effect of properly implemented and enforced traffic laws as a measure for deterrence from traffic offences.

#### Chapter Five: Conclusion and Recommendations

This chapter will contain the summary of the findings as well as its conclusion. It will also stipulate recommendations on the study that complement the findings of this paper.

## CHAPTER 2: THEORETICAL FRAMEWORK

### 2.1 Introduction

This chapter expounds on the theoretical framework of the dissertation. The objective is to study and analyse the deterrence theory regarding traffic offences, as there is no question that effective deterrence of traffic offenders is the *raison d'être* of traffic legislation. It will also briefly study areas of convergence among deterrence and other theories with the potential to improve legal enforcement relating to traffic offences.

### 2.2 Deterrence Theory

The deterrence theory is central to improving road safety within countries, as it proposes that individuals will avoid criminal behaviour if they fear the consequences of their actions. Cesare Beccaria and Jeremy Bentham, 18th century utilitarian philosophers, posited that crime rose from the conscious, rational considerations of an individual.<sup>19</sup> Therefore, the concept of deterrence is based on an essentially hedonistic calculus of pain and pleasure. If the costs of committing a traffic offence are set high enough to assure that the gains to be derived from it are not profitable, the rational man will not commit the crime.<sup>20</sup> However, the punishments should be sufficiently severe to stop repetition of further offensive behaviour, but no more so. This is because, punishment is evil and ought only to be admitted in as far as it promises to exclude some greater evil.<sup>21</sup>

#### 2.2.1 Specific versus General Deterrence

Criminal deterrence is divided broadly into two categories, specific and general.<sup>22</sup> Specific deterrence refers to the steps taken to deter a traffic offender from repeating a criminal act,<sup>23</sup> for fear of incurring additional punishment. The application of legal sanctions following a conviction for an offence such as driving under the influence of alcohol or speeding has a number of purposes including punishment, reform, retribution and possibly incapacitation.<sup>24</sup> This is because, a primary goal of the legal sanctions enforced are to deter traffic offenders from repeating the same crime in the future, and thus, the penalty should be perceived as certain,

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<sup>19</sup> Andenaes J, 'The General Preventive Effects of Punishment' 114 *University of Pennsylvania Law Review*, 1966.

<sup>20</sup> Low P. W, Jeffries J. C and Bonnie R. J, *Criminal Law*, Foundation Press, 1986, 8.

<sup>21</sup> Bentham J and Dumont E, *The Rationale of Punishment*, R Heward, 1830, 19-41.

<sup>22</sup> Beyleveld D, 'Deterrence Research as A Basis for Deterrence Policies' 18 *The Howard Journal of Criminal Justice*, 1979.

<sup>23</sup> Low P. W, Jeffries J. C and Bonnie R. J, *Criminal Law*, Foundation Press, 1986, at 7.

<sup>24</sup> Freeman J and others, 'The Self-Reported Impact of Legal and Non-Legal Sanctions On a Group of Recidivist Drink Drivers' 9 *Transportation Research Part F: Traffic Psychology and Behaviour*, 2006, 53-69.

severe and swift.<sup>25</sup> A growing body of research has demonstrated that punishment, in the form of fines or a conviction, have the capacity to reduce the likelihood of re-offending among a range of traffic offences such as driving over the speed limit,<sup>26</sup> driving under the influence of alcohol and unlicensed driving.<sup>27</sup>

On the other hand, general deterrence refers to the impact that punishing a criminal offender has on other people within society, hence an individual will refrain from engaging in criminal behaviour as a result.<sup>28</sup> Johann Gottlieb Fichte, a German philosopher expressed that: “*It is to some extent true that punishment serves as an example, namely to convince all of the infallible execution of the law. The execution of the law is a public act. Each citizen who has heard of an offence, must also learn that it has been punished...*”<sup>29</sup> This is because, other people will be deterred from criminal behaviour once they see what happens to those who commit crimes.<sup>30</sup> The threat of apprehension and subsequent legal sanctions can produce a deterrent effect, on offending behaviour with regard to traffic offences especially if it is publicised through all media platforms. Further, an increase in the perceived severity or certainty of penalties, as well as apprehension, tend to produce a beneficial reduction in the commission of traffic offences.<sup>31</sup>

In the road safety arena, the severity of the punishment is determined mainly by the legislation enforced, whereas the swiftness of the punishment is determined mainly by the administrative or judiciary system. The main motivation of law enforcement therefore is in increasing the certainty of apprehension and punishment. Given a legal sanction, a change in the perceived probability of apprehension will result in a change in the perceived cost of engaging in the illegal activity.<sup>32</sup> Thus, an individual contemplating the commission of a crime would take into

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<sup>25</sup> Freeman J, 'The Self-Reported Impact of Legal and Non-Legal Sanctions On a Group of Recidivist Drink Drivers', 53-69.

<sup>26</sup> Elvik R and Christensen P, 'The Deterrent Effect of Increasing Fixed Penalties for Traffic Offences: The Norwegian Experience' 38 *Journal of Safety Research*, 2007.

<sup>27</sup> Siskind V, 'Does License Disqualification Reduce Re-offense Rates?' 28 *Accident Analysis & Prevention*, 1996.

<sup>28</sup> Hirsch A. V and others, 'Criminal Deterrence and Sentence Severity: An Analysis of Recent Research' Hart Publishing, 1999.

<sup>29</sup> Oppenheimer H, *The Rationale of Punishment*, Patterson Smith, 1975.

<sup>30</sup> Low P. W, Jeffries J. C and Bonnie R. J, *Criminal Law*, Foundation Press, 1986, 8.

<sup>31</sup> Grasmick H. G and Homel R, 'Policing and Punishing the Drinking Driver: A Study of General and Specific Deterrence.' 18 *Contemporary Sociology*, 1989.

<sup>32</sup> Tay R, 'General and Specific Deterrent Effects of Traffic Enforcement: Do We Have to Catch Offenders to Reduce Crashes?' 39 *Journal of Transport Economics and Policy*, 2005

<<http://www.jstor.org.ezproxy.library.strathmore.edu/stable/20053961>> on 14 October 2016

consideration a cost-benefit analysis and would execute the criminal plan only if potential benefits sufficiently outweighed expected costs.<sup>33</sup>

### **2.2.2 Certainty and Severity of Punishment**

Proponents of the classic deterrence doctrine argue that, an increase in the probability of conviction or severity of punishment leads to a decrease in the commission of criminal acts.<sup>34</sup> It is asserted that certainty of punishment is more important than severity of punishment in deterring crime.<sup>35</sup> Certainty, in this context, refers to the perceived likelihood that an offender will be arrested and punished for their criminal act. That is, individuals who recognize their chances of arrest as high are more deterred from committing an offence than individuals who believe that they are unlikely to be apprehended. Thus, road safety operations that increase the certainty of apprehension for engaging in illegal behaviours are likely to have a positive effect on deterring offenders.<sup>36</sup>

Moreover, individuals will be reluctant to commit an offence if they consider that the penalty for such an offence is severe. That is, as the severity of punishment increases, the likelihood of an individual committing that offence decreases. However, Beccaria and Bentham acknowledged that severity only has a deterrent impact when the certainty level is high enough to make severity salient.<sup>37</sup> It has therefore been argued that the greatest deterrent impact in regards to severity of sanctions will be found among those who have never committed an offence, rather than habitual offenders.<sup>38</sup>

### **2.3 Sociology-Based Theory**

The deterrence theory has far reaching consequences beyond the fear of punishment it induces on an individual contemplating a criminal offence. It also has a social effect, which is the capacity of the law to reinforce attitudes and values and to become part of the conditioning that leads individuals not to commit crime as a matter of habit or lifestyle.<sup>39</sup> Emile Durkheim, a

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<sup>33</sup> Kennedy K. C, 'A Critical Appraisal of Criminal Deterrence Theory' 88 *The Dickinson Law Review*, 1983 <<http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1036&context=facpubs>> on 14 October 2016

<sup>34</sup> Andenaes J, 'The General Preventive Effects of Punishment' 114 *University of Pennsylvania Law Review*, 1966.

<sup>35</sup> Antunes G and Hunt A. L, 'The Impact of Certainty and Severity of Punishment On Levels of Crime in American States: An Extended Analysis' 64 *The Journal of Criminal Law and Criminology*, 1973.

<sup>36</sup> Watson B and Freeman J, 'Perceptions and Experiences of Random Breath Testing in Queensland and The Self-Reported Deterrent Impact On Drunk Driving' 8 *Traffic Injury Prevention*, 2007.

<sup>37</sup> Antunes G and Hunt A. L, 'The Impact of Certainty and Severity of Punishment On Levels of Crime in American States: An Extended Analysis' 64 *The Journal of Criminal Law and Criminology*, 1973, 151.

<sup>38</sup> Grasmick H. G and Homel R, 'Policing and Punishing the Drinking Driver: A Study of General and Specific Deterrence.' 18 *Contemporary Sociology*, 1989.

<sup>39</sup> Low P. W, Jeffries J. C and Bonnie R. J, *Criminal Law*, Foundation Press, 1986, 15.

French sociologist, argued that if crime exists in society it must have a purpose for existing and hence it must serve some kind of function. In this respect, legal systems develop in order to codify moral behaviour and, in so doing, lays the groundwork for our understanding of the functions of both law and crime.<sup>40</sup> Further, he reasoned that people are ill disposed to regulate their own wants, and thus long for socially imposed controls which if not effectively implemented lead to an “anomie”<sup>41</sup>. Therefore, punishment of traffic offences is society’s disapproval of the action and forms the public moral code thereby creating inhibitions against committing the offence.

R.K. Merton in an attempt to adapt Durkheim's general ideas about anomie developed the strain theory which posited that individual goal attainment must be focused on socially acceptable goals, and only socially acceptable means can be used to achieve them.<sup>42</sup> However, where conventional means of achieving desired goals cannot be achieved by an individual, they adopt illegitimate or deviant means to achieve the goal. In regard to traffic offences, strain theory suggests that it is possible to nullify favourable use of roads and good driving behaviour such as driving over the speed limit, in order to avoid being late.

Further, Richard A Cloward and Lloyd E Ohlin developed another element required for criminal behaviour: a teaching mechanism that exposes and predisposes the strained to the anti-social behaviour through illustration.<sup>43</sup> Therefore, the violation of traffic rules can be taught to children in the presence of adults who choose to commit a traffic offence. David Harris made observations on the degree to which traffic violations are widespread among motorists. His findings led to the conclusion that breaking of traffic laws had been taught and well received, especially by young males whose degree of crash involvement has resulted in their age group and gender earns them the highest insurance rates.<sup>44</sup>

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<sup>40</sup> Durkheim E and Simpson G, *Suicide*, Free Press, 1997.

<sup>41</sup> Ibid: The concept used by Durkheim to express the weakening of moral ties.

<sup>42</sup> Merton R.K, *Social Theory and Social Structure*, New York: Free Press, 1957.

<sup>43</sup> Cloward R. A. and Ohlin L. E, *Delinquency and Opportunity: A Theory of Delinquent Gangs*, Free Press, 1960.

<sup>44</sup> Harris D. A, *Profiles in Injustice*, New Press, 2002.

## CHAPTER 3: ANALYSIS ON KENYA'S TRAFFIC LEGISLATION

### 3.1 Introduction

The main aim of this chapter is to assess the traffic legislation and penalties for three specific road offences which include, causing death by dangerous driving or obstruction, driving under the influence of alcohol, and driving over the speed limit.

The Chapter will decipher the deterrent effect of traffic laws to the commission of traffic offences. Further, it will look in to the effectiveness of the National Transport and Safety Authority (NTSA), a legal body established by the National Transport and Safety Act of 2012.

### 3.2 The Traffic Act

The Traffic Act (Cap 403), is regulatory in nature. This is because it focuses on the regulation of traffic on the road. It has employed various means to achieve its aims, which include: the registration of motor vehicles, the regulation of public service vehicles, and the licensing of both drivers and motor vehicles.<sup>45</sup> The Act also provides provisions that criminalize certain activities to foster proper use of roads as well as promote road safety for all road users irrespective of the means of movement.

### 3.3 Causing Death by Dangerous Driving or Obstruction

Part V of the Traffic Act provides for driving and other offences in relation to use of vehicles on the road.<sup>46</sup> Section 46 of the Act states:

*“Any person who causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, or by leaving any vehicle on a road in a position which would be dangerous to the public... shall be guilty of an offence whether or not the requirements of section 50 have been satisfied and liable to imprisonment for a term not exceeding 10 years and the court shall exercise the power conferred by Part VIII of cancelling any driving licence or provisional driving licence held by the offender and declaring the offender disqualified for holding or obtaining a driving licence for a period of three years starting from the date of conviction or the end of any prison sentence imposed under this section, whichever is the later.”<sup>47</sup>*

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<sup>45</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 469.

<sup>46</sup> Part V, *Traffic Act* (No. 38 of 2012).

<sup>47</sup> Section 46, *Traffic Act* (No. 38 of 2012).

Dangerous driving or handling of a motor vehicle is determined by the circumstances of a case. The nature, condition and use of the road and the amount of traffic which is on the road or which might reasonably be expected<sup>48</sup> are all factors that determine whether a driver's actions amount to the offence of causing death by dangerous driving or obstruction. Judge Mosdell in *Shah v Republic*<sup>49</sup> stated that section 46 of the Traffic Act creates four separate offences, which include, causing death of another by driving a motor vehicle on a road: a) recklessly, or b) at a speed, or c) in a manner which is dangerous to the public, or d) by leaving a vehicle on a road in a position or condition that is dangerous to the public.<sup>50</sup> Due to this, section 46 often leads to the drafting of charges that are duplex. To avoid such duplicity, the charges must be drawn conjunctively if the matter relates to one single act.<sup>51</sup>

In *Pyarali v Republic*<sup>52</sup> the requirements for the offence were clearly defined. The court stated that to determine whether an accused committed the offence of causing death by dangerous driving or obstruction specific factors must be taken into consideration. First, the manner of the actual driving must amount to reckless behaviour. Second, the actions of the driver should result to a situation where a reasonable man would consider it dangerous driving or handling of a motor vehicle. Lastly, the act of dangerous driving should be a substantial cause of death but not the only cause. This was seen in *R v Hennigan*,<sup>53</sup> where the defendant was accused of killing two passengers in another car. The court held that as long as dangerous driving is a cause and something more than de minimis, it is sufficient. There is nothing which requires the manner of the driving to be a substantial cause, or a major cause. Therefore, the defendant was found guilty of causing death by dangerous driving. These factors therefore ensure that an accused meets the threshold for the crime established under section 46 of the Traffic Act.

Therefore, the occurrence of an accident solely is not sufficient to justify the offence of causing death by dangerous driving and obstruction. Instead, the evidence must deduce the manifestation of a dangerous situation and the driver must be guilty of deviating from the required standard of driving that is expected both legally and socially.

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<sup>48</sup> Section 46, *Traffic Act* (No. 38 of 2012).

<sup>49</sup> *Shah v Republic* (1969) EA 197.

<sup>50</sup> (1969) EA 197.

<sup>51</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 473.

<sup>52</sup> *Pyarali v Republic* (1971) EA 169.

<sup>53</sup> *R v Hennigan* (1971) 3 All ER 133.

### 3.3.1 Test of Dangerous Driving

The test of determining the guilt for the offence of dangerous driving is objective as was shown in *Pyarali v Republic*. Judge Onyiuke stated that,

*“the test of whether a piece of driving is dangerous is objective and if the manoeuvre itself is dangerous the degree of negligence or care of the driver is irrelevant”*.<sup>54</sup>

The reason for the adoption of an objective test for dangerous driving is because the circumstances of the offence are determined on a case-by-case basis. In *Republic v Evans*<sup>55</sup> it was held that:

*“If a man adopts a manner of driving which the jury think was dangerous to other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best”*.<sup>56</sup>

This ratio decidendi establishes that the guilt of the accused is wholly dependent on their actions at the time the accident happened. A driver will be guilty of the offence of causing death by dangerous driving if after the application of the reasonable man test, it is found that their actions amount to departure of the standard of driving they are required to uphold.

In addition, the prosecution only must prove that the dangerous driving was a substantial cause of death and not the main cause. The Court of Appeal in *Atito v Republic*<sup>57</sup> laid down the law on the standard of proof:

*“to justify a conviction for the offence of causing death by dangerous driving there must not only be a situation which viewed objectively was dangerous but there must also be some fault on the part of the driver causing that situation.”*<sup>58</sup>

Therefore, dangerous driving is not an ordinary type of crime because there requires a dangerous situation, as well as some fault on the driver of the motor vehicle. Fault, an essential ingredient of the offence, refers to an act or omission which was negligent and departs from the

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<sup>54</sup> *Pyarali v Republic* (1971) EA 169.

<sup>55</sup> *Republic v Evans* (1963) 46 Cr App R 62.

<sup>56</sup> (1963) 46 Cr App R 62.

<sup>57</sup> *Atito v Republic* (1975) EA 281.

<sup>58</sup> (1975) EA 281.

standard of driving expected of a reasonably prudent driver.<sup>59</sup> The Court of Appeal in *Orweryo Missiani v Republic*<sup>60</sup> defined this element as:

*“Fault” certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame .... Fault involves a failure; a falling below the care or skill of a competent and experienced driver, in relation to the manner of driving and to the relevant circumstances of the case. A fault in that sense, even though it might be slight, even though it be a momentary lapse, even though normally no danger would have arisen from it, is sufficient.”*<sup>61</sup>

In order to convict an individual for the offence of causing death by dangerous driving and obstruction their manner of driving must result in a fault of their own. Further, the offence does not allow for the defense of contributory negligence as it is not relevant in criminal law.

### **3.3.2 Custodial or Non-Custodial Sentence**

The offence established under section 46 of the Act is grouped into two. The first category is for accidents which have occurred due to the momentary inattention or misjudgement of the driver. The second category includes accidents where the accused has driven in a manner which has shown a selfish disregard for the safety of other road users or his passengers or with a degree of recklessness.<sup>62</sup>

In addition, offenders, too, can be put into categories. A substantial number have good driving records, a fair number have driving records which reveal a propensity to disregard speed restrictions, road signs or to drive carelessly, and a few have records which show that they have no regard whatsoever for either the traffic law or the lives and safety of other road users. Courts have held that an offender who has a good driving record should normally be fined and disqualified from holding or obtaining a driving licence for the minimum statutory period or a period not greatly exceeding it, unless of course there are special reasons for not disqualifying. On the other hand, for those who have caused a fatal accident through a selfish disregard for the safety of other road users or their passengers or who have driven recklessly, a custodial sentence with a long period of disqualification may well be appropriate, and if this kind of

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<sup>59</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 474.

<sup>60</sup> *Orweryo Missiani v Republic* (1979) KLR 285.

<sup>61</sup> (1979) KLR 289

<sup>62</sup> *Thoya v Republic* (2000) eKLR.

driving is coupled with a bad driving record the period of disqualification should be such as will relieve the public of a potential danger for a long time.<sup>63</sup>

The provision creating the offence of causing death by dangerous driving makes it punishable with imprisonment and does not expressly provide for the imposition of a fine as an alternative. However, courts have opined that it would not be fair for an accused convicted of the offence to be sent to prison without a case for doing so is made.<sup>64</sup> This was upheld in *Govid Shamji v Republic*<sup>65</sup>, as the court stated that:

*“The offence of causing death by dangerous driving is not an ordinary type of crime. While it cannot be given an aura of protection by putting it in a glass case of its own, the people who commit this offence do not have a propensity for it, neither is it a type of crime committed for gain, revenge, lust or to emulate other criminals. In a case of causing death by dangerous driving, a custodial sentence does not necessarily serve the interests of justice as well as the interest of the public. There are of course cases where a custodial sentence is merited, for example, when there is a compelling feature such as an element of intoxication or recklessness”.*<sup>66</sup>

Section 46 of the Act provides for a maximum sentence of 10 years, however, this does not eliminate the other options available for sentencing to be considered with regard to the circumstances of the case. Therefore, depending on the case, an accused can be levied with a fine or be disqualified from holding a driving licence for a time that the court deems fit. This was evidenced by Judge Waki in *Thoya v Republic*,<sup>67</sup> where the appellants sentence was set aside and substituted with a fine of ten thousand Kenya shillings.

### **3.4 Driving Under the Influence of Alcohol**

Alcohol interferes with the brain’s communication pathways, and affects the way it works. These disruptions lead to a change in mood and behaviour, and make it harder to think clearly and move with coordination.<sup>68</sup> Section 44 of the Act creates the offence of a person driving while under the influence of drink or a drug that makes them incapable of controlling a motor vehicle appropriately. This offence attracts a fine not exceeding one hundred thousand shillings

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<sup>63</sup> Republic v Guilfoyle (1973) All ER 844.

<sup>64</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 477.

<sup>65</sup> *Govid Shamji v Republic* (1975) EA 119.

<sup>66</sup> (1975) EA 119.

<sup>67</sup> (2000) eKLR.

<sup>68</sup> "Alcohol's Effects On the Body | National Institute On Alcohol Abuse and Alcoholism (NIAAA)" (*Niaaa.nih.gov*, 2017) <<https://www.niaaa.nih.gov/alcohol-health/alcohols-effects-body>> on 5 January 2017.

or to imprisonment for a term not exceeding two years or to both, and the disqualification from holding a licence for a period of twelve months from the date of conviction.<sup>69</sup> In *Alfred Sutton v R*,<sup>70</sup> it was held that a person is not guilty of the offence of driving under the influence of drink just because they were under the influence of alcohol when handling a motor vehicle. In order to merit this offence, one must be incapable of exercising proper control of the car. This means that consumption of alcohol to a certain degree does not negate an individual's control of handling a motor vehicle properly.<sup>71</sup>

### **3.4.1 Mututho Laws**

In 2010, John Mututho's Alcoholic Drinks Control Act was enacted into law. The aim of the legislation was to control the sale, use and type of alcohol within Kenya. It was a very controversial piece of legislation and led to various reactions throughout the country. In 2012, the Alcoholic Drinks Control (Amendment) Bill was passed by parliament. Clause 31 of the Bill amended section 33 of the Alcoholic Drinks Control Act. The amendment created the requirement for the cancellation of driving licenses for individuals convicted of drunken driving three times within a year. In addition, it provided the specific level for blood alcohol for drunk driving at 0.005%.<sup>72</sup>

The National Highway Traffic Safety Administration (NHTSA) in the United States carried out a study on the effects of alcohol which showed that blood alcohol content of 0.005% resulted in reduced coordination, reduced ability to track moving objects, difficulty steering, reduced response to emergency driving situations.<sup>73</sup> Therefore, in this state a driver's attention to the road is already impaired. If something was to unexpectedly occur in the driver's environment which also required their attention, such as a pedestrian stepping onto the road, it would be more difficult for them to adequately shift their attention and stop.

This law, hence, allows police officers in cooperation with the NTSA, to stop motorists and require them to blow into an Alcoblow breathalyser which gives immediate results of a driver's blood alcohol. Those found guilty of having a higher blood alcohol level than the specified limit are reprimanded. At the beginning of this phenomenon, the media was present in courts where

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<sup>69</sup> Section 44 (1) and (2), *Traffic Act* (No. 38 of 2012).

<sup>70</sup> *Alfred Sutton v R* (1957) EA 812.

<sup>71</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 472.

<sup>72</sup> Alcoholic Drinks Control (Amendment) Bill (2012)

<sup>73</sup> "Drunk Driving" (NHTSA, 2017) <<https://www.nhtsa.gov/risky-driving/drunk-driving>> on 5 January 2017.

the accused would be publicly shamed on live television. This led to a drop in fatalities caused by the offence of driving under the influence of drink.

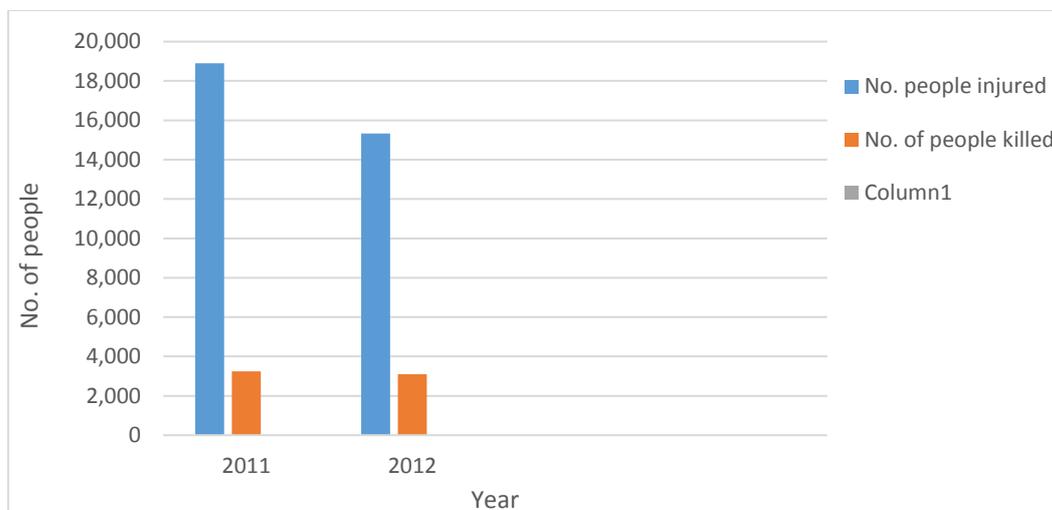


Figure 2: A drop in the number of people injured and killed as a result of drunk driving accidents between 2011 and 2012<sup>74</sup>

In 2014, the Transport Cabinet Secretary, Michael Kamau, re-introduced the use of Alcoblow breathalysers as part of the drunk-driving awareness campaign. He stated that use of the breathalysers had resulted in the reduced number of road fatalities in the country.<sup>75</sup>

The Mututho laws, during the periods of proper implementation by the police and NTSA have resulted in lower accidents caused by the offence of driving while under the influence of drink.

### 3.5 Speed of Motor Vehicles

The Traffic Act in section 42 (1) provides that a person should not drive a motor vehicle, or allow another person to drive a vehicle at a speed that is higher than the prescribed maximum speed for that class of vehicle.<sup>76</sup> Further, section 42(3) establishes a speed limit of fifty kilometres per hour on all roads around and within a trading centre, township or city. This is because these places are heavily populated and there are all types of road users from pedestrians,

<sup>74</sup> Mayabi L, "Slight Drop in Kenyan Road Fatalities This Year" *Capital News*, 2012 <<http://www.capitalfm.co.ke/news/2012/12/slight-drop-in-kenyan-road-fatalities-this-year/>> on 5 January 2017.

<sup>75</sup> Kanini M, "Alcoblow Has Saved Lives, Says Kamau" *The Standard*, 2014 <Alcoblow has saved lives, says Kamau Read more at: <https://www.standardmedia.co.ke/article/2000102527/alcoblow-has-saved-lives-says-kamau>> on 5 January 2017.

<sup>76</sup> Section 42 (1), *Traffic Act* (No. 38 of 2012).

motorcyclists to motorists. Therefore, to ensure that road safety is adhered to by motorists the speed limit is lower to allow them to navigate such areas.

In 2014, the Traffic Amendment Bill was enacted resulting in the amendments of section 42 and 43 of the Traffic Act. The Bill inserted section 42 (3A) which allows for a maximum speed limit of thirty kilometres per hour around specific areas, such as: schools, hospitals, and public playing ground areas. Further, it revised the penalties for the offence of over speeding per the speed that a driver is exceeding, hence fines range from ten thousand shillings to twenty-five thousand shillings.<sup>77</sup>

The offence of driving over the speed limit requires the evidence of one witness relying on a speedometer, regardless of the accuracy of the speedometer.<sup>78</sup> The court will not convict a driver for the offence of driving over the speed limit based on opinion evidence, even when it belongs to a police officer.<sup>79</sup> This is because, evidence must be supported in order for it to be a fact. This was depicted in the case of Kipkoech Ngetich and the NTSA, where the accused was charged with driving at a speed of one hundred and fourteen kilometres per hour along the Nakuru-Kericho highway against a compulsory maximum speed limit of one hundred kilometres per hour. He denied the charge and the case proceeded to court where the police failed to show-up for the hearing twice as well as furnish the court with the speed gun which was used to record the alleged speeding incident or its maintenance charts. The collapse of the police's case forced the DPP to withdraw the case according to Article 87 (A) of the Criminal Procedure Code. The accused, a prominent advocate, is now challenging the legality of speed guns and suing the NTSA for ten million shillings as compensation for the alleged 'malicious charges'.<sup>80</sup>

### 3.5.1 Michuki Rules

In February 2004, the Traffic (Amendment) Rules<sup>81</sup> initiated by and subsequently named after then- Minister of Transport John Michuki became effective. The objective of the rules was to:

*“reduce accidents caused by over speeding; enhance safety of commuters; ensure responsibility, accountability and competence of drivers and conductors; eliminate*

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<sup>77</sup> First Schedule, *Traffic Amendment Bill* (No. 32 of 2014).

<sup>78</sup> Musyoka W, *Criminal Law*, Law Africa Publishing, 2013, 471.

<sup>79</sup> Section 43 (3), *Traffic Act* (No. 38 of 2012).

<sup>80</sup> Tanui N, "Kericho Lawyer Seeks Sh10 Million Damages from NTSA Over Traffic Charge" *The Standard*, 2016 <<https://www.standardmedia.co.ke/article/2000223429/kericho-lawyer-seeks-sh10-million-damages-from-ntsa-over-traffic-charge>> on 5 January 2017.

<sup>81</sup> *Legal Notice* (No. 161 of 2003).

*illegal drivers, conductors and criminals that had infiltrated the industry; and facilitate identification of vehicles and restrict their operation to authorized routes”<sup>82</sup>*

In order to adhere to these rules, all public service vehicles (PSVs) were required to: a) install speed governors that would put off the engine automatically if the vehicle went over eighty kilometres per hour, b) install passenger seat belts, c) limit the number of passengers to the number of seats, d) paint a yellow stripe on all matatus and taxis, and e) license and vet drivers and conductors.<sup>83</sup> The punishment for breaking any of the rules under the Legal Notice was a fine not exceeding six hundred shillings, or imprisonment for a maximum of two months or both.<sup>84</sup> A few of these rules were also imposed on all motorists, such as the requirement for all passengers in a motor vehicle to put on a seat belt.

The main achievement of the rules was the reduction of road accidents caused by speeding PSVs. A report by the Ministry of Transport and Communication showed that in the first six months of the rules being implemented there had been a reduction in the number of accidents from the previous year.<sup>85</sup> Moreover, the compliance of the rules opened the public transport industry to more investors due to the sanity and order, as well as the elimination of cartels within the industry.

### **3.6 The National Transport and Safety Authority (NTSA)**

The NTSA was established by section 3 of the National Transport and Safety Authority Act, 2012. The mandate of the NTSA under the Act is to administer the Traffic Act and any other written law; advise and make recommendations to the Cabinet Secretary regarding matters of road transport and safety; plan, manage and regulate the road transport system; implement policies relating to road transport and safety; and ensure the provision of safe, reliable and efficient road transport services.<sup>86</sup> Since its establishment it has made a couple of developments towards better road safety especially within urban areas. However, in order for the NTSA to achieve more of its goals it has set out to register and license motor vehicles, develop and

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<sup>82</sup> Chitere P. O and N. Kibua T. N, ‘Achievements And Limitations Of Reforms In The Matatu Industry’ *Institute of Policy Analysis and Research*, 2004, 7 <<http://www.ssatp.org/sites/ssatp/files/publications/CountryDocuments/Road-Safety-Kenya-IPAR.pdf>> on 5 January 2017.

<sup>83</sup> Habyarimana J and Jack W, ‘State Vs Consumer Regulation: An Evaluation of Two Road Safety Interventions in Kenya’ *National Bureau Of Economic Research*, 2012, 3 <<http://www.nber.org/papers/w18378.pdf>> on 5 May 2017.

<sup>84</sup> Rule 72, *Legal Notice* (No. 161 of 2003).

<sup>85</sup> ‘Transformation of Road Transport Report’ *Ministry of Transport and Communication*, 2004.

<sup>86</sup> Section 4 (1), *National Transport and Safety Authority Act* (No. 33 of 2012).

implements road safety strategies as well as compiles inspection reports regarding traffic accidents.<sup>87</sup>

In 2015, for the first time, NTSA made a deliberate effort to measure road safety performance in accordance with international best practice. International best practice in road safety performance requires that exposure factors are taken into consideration such as motorization levels, population and length of paved roads.<sup>88</sup> This is because exposure factors will affect the number of fatalities within a region. For example, if all factors remain constant, the higher the level of motorization within a region will result in higher numbers of road offences being committed hence more road accidents.

The NTSA Report, found that during the working days of the week most road accidents occur at 8:00pm due to motorists driving at high speeds or controlling a vehicle while under the influence of drink. However, the highest number of road fatalities occur during the weekend due to the increase in road users in addition to high speed driving and drunk driving. Sadly, the most affected age group ranges between 20 – 44 years, individuals who are the most productive members of society.<sup>89</sup>

The NTSA Act provides that any person who goes against the lawful direction of an individual directly associated with the Authority or obstructs them from carrying out their duties is guilty of an offence with a penalty of a fine of at least one hundred thousand shillings or imprisonment for a maximum of one year.<sup>90</sup>

Since its establishment, the NTSA has continued and even enhanced the implementation of traffic laws such as the use of Alcoblow breathalysers. During the weekends, NTSA official situate themselves strategically on roads near bars and clubs where they arrest drivers guilty of the offence of driving while under the influence of drink.

### **3.7 Conclusion**

The legal framework enacted and the national organizations created to handle the commission of causing death by dangerous driving, driving while under the influence of alcohol, and driving over the speed limit are sufficient to deter drivers of motor vehicles. This is due to the penalties that are a result of the offences.

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<sup>87</sup> Section 4 (2), *National Transport and Safety Authority Act* (No. 33 of 2012).

<sup>88</sup> 'Final 2015 Road Safety Status Report' NTSA, 2015.

<sup>89</sup> NTSA, 2015.

<sup>90</sup> Section 53, *National Transport and Safety Authority Act* (No. 33 of 2012).

## CHAPTER 4: A STUDY OF DENMARK'S TRAFFIC LAWS

### 4.1 Introduction

Denmark, globally is one of the countries with low numbers of road accidents on an annual basis. This chapter will analyse Denmark's traffic laws with the aim of understanding how they deter motorists from committing traffic offences. The main aim of this exercise is to extrapolate what Kenya can gain from their mechanisms of enforcement and implementation of traffic laws.

### 4.2 Denmark's Traffic Legislations and Action Plan

The Danish Road Traffic Act came into force in November, 1978. Its main purpose was to change the status of streets from traffic streets to living areas. Traffic streets refers to streets with a priority for motor vehicles, whereas living areas are streets whose predominant traffic are pedestrians.<sup>91</sup> This change of status resulted in living area streets having speed limits of fifteen kilometres per hour, which ensured that pedestrians and motorists use roads in a safe and prudent manner. However, it is important to note that in Denmark, policy making on road safety is centralized. It integrates three major parties to the process, who include: The Ministry of Transport, Ministry of Justice, and the Danish Road Safety Commission (DRSC).<sup>92</sup>

In 2000, the DRSC created a national action plan to reduce the number of people killed or injured in traffic accidents by a specific percentage.<sup>93</sup> Karsten Nonbo, Chairman of the DRSC, stated that the objectives set out in the action plan for 2001-2012, though ambitious, had been achieved.<sup>94</sup> Through the enforcement of the action plan, they had managed to lower the commission of traffic offences by more than half hence leading to the lowest number of road accidents experienced by the country since the 1930s.<sup>95</sup>

The DRSC, work together with the Road Safety Commission's Monitoring Group. Its main objective is to follow up on the Action Plan which expired at the end of 2012, and assist the Commission with ideas and suggestions in the work to draw up the new Action Plan for 2013–

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<sup>91</sup> Engel U and Thomsen L. K, 'Safety Effects of Speed Reducing Measures in Danish Residential Areas' 24 *Accident Analysis & Prevention*, 1992, 17-28.

<sup>92</sup> Abay K, 'Monetary or Non-Monetary Instruments for Safe Driving: Panel Data Evidence On the Effect of Demerit-Point-System in Denmark' University of Copenhagen, 2014, 6.

<sup>93</sup> 'Every Accident Is One Too Many - Road Safety Starts with You: The Danish Road Safety Commission National Action Plan 2001-2012' The Danish Ministry of Transport, 2000, 3.

<sup>94</sup> 'Every Accident Is One Too Many - A Shared Responsibility: The Danish Road Safety Commission National Action Plan 2013-2020' Danish Road Safety Commission, 2013, 3.

<sup>95</sup> Danish Road Safety Commission, 2013, 3.

2020. In order to achieve this the Monitoring Group has set up a Working Group which comprises of: The Danish Transport Authority, the Danish Road Directorate, and the Danish National Police.<sup>96</sup> The police are the main enforcers of traffic laws to prevent motorists from engaging in traffic offences. In addition to handling traffic control, they worked on initiatives that led to awareness of traffic offences as well as erecting road signage to be adhered to by all motorists.

### **4.3 Enforcement of Deterrence Measures**

Driving over the speed limit is one of the major traffic offences that leads to road fatalities. In Denmark, speeding is one of the contributing factors of up to 50% of all road accidents.<sup>97</sup> The use of automated mobile speed cameras in police vans is employed to deter motorists from the offence of driving over the speed limit. Larus Aguston, argues that the reason for using mobile speed cameras instead of fixed cameras rests on the aim of reducing speeds nation-wide rather than on specific road networks.<sup>98</sup> This is because, unlike in the case of fixed cameras installed on some road networks drivers cannot avoid traffic enforcement by the police by choosing different roads.

Further, a driver caught driving above the regulated speed limit is captured by the speed camera which takes a photo of the car's license plate and the face of the driver. Thereafter, a letter along with the picture and fine is sent to the owner of the car, who may not be the driver who made the offence. The owner of the car is obliged to disclose the identity of the driver who made the traffic offense, and the fine is finally imposed on the offender.<sup>99</sup>

Driving under the influence of alcohol, is another offence that results in a large number of fatalities. 25% of fatal road accidents are due to drunk driving, in Denmark.<sup>100</sup> This led the DRSC to lower the level of blood alcohol content from 0.05% to 0.02% for all drivers, as its one of the most serious offences.<sup>101</sup> The police carry out random alcohol tests on road networks. A motorist caught breaking the limit of alcohol imposed incurs a fine or imprisonment. If a

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<sup>96</sup> 'Every Accident Is One Too Many - A Shared Responsibility: The Danish Road Safety Commission National Action Plan 2013-2020' Danish Road Safety Commission, 2013, 7.

<sup>97</sup> 'Every Accident Is One Too Many - Road Safety Starts with You: The Danish Road Safety Commission National Action Plan 2001-2012' The Danish Ministry of Transport, 2000, 3 and 31.

<sup>98</sup> Agustsson L and Ottesen S, 'Reducing Car Speed Nation-Wide: The Effectiveness of Mobile Speed Cameras in Denmark' Danish Ministry of Transport, 2012, 3.

<sup>99</sup> Abay K, 'Monetary or Non-Monetary Instruments for Safe Driving: Panel Data Evidence On the Effect of Demerit-Point-System in Denmark' University of Copenhagen, 2014, 7.

<sup>100</sup> ITF, 'Road Safety Annual Report' OECD Publishing (2015) at 139

<sup>101</sup> 'Every Accident Is One Too Many - A Shared Responsibility: The Danish Road Safety Commission National Action Plan 2013-2020' Danish Road Safety Commission, 2013, 70.

driver who causes or is involved in an accident and their blood alcohol content is over the legal limit, a prison sentence is issued.<sup>102</sup> First time offenders, especially for drivers who have not held their licence for more than three years, have their licences suspended and are required to go on self-paid obligatory alcohol and traffic courses. These deter drivers from engaging in the offence as well as curbing repetition of the offence.

#### **4.3.1 Non-monetary Penalties**

In September 2005, Denmark introduced a new penalty system namely the Demerit-Point-System (DPS).<sup>103</sup> The DPS assigns a demerit point on a driver's license for each traffic violation committed, and three demerit points in three years lead to conditional suspension of a driving license. Therefore, committing a traffic offence may lead to two types of punishments: 1) a traffic fine if they exceed the speed limit by less than 30 percent, or 2) a fine that is comparable to exceeding the speed limit by more than 30 percent and a demerit point on their driving license.

Importantly, the amount of fine imposed as well as assignment of demerit points are independent of previous traffic violations and remain constant regardless of previous offences. The amount of fine imposed slightly varies with the actual driving speed, but it is bounded above and below some level.<sup>104</sup> For instance, an individual driving at a speed 65 km/h in a 50 km/h speed limit road would be subject to a fine amounting 2500 DKK which is equivalent to 36,795 Kenya shillings. Further, driving at 66 km/hr on the same road leads to a fine of 2500 DKK and one demerit point. Finally, if a driver accumulates three demerit points, assigned either for speed violations or other any other traffic offence, in three years, their driving license is conditionally suspended.<sup>105</sup> Each demerit point assigned expires after a period of three years.

It was found that the introduction of demerit points substantially reduced drivers' frequency to commit traffic offences. Further, drivers' effort for safe driving increased with the number of demerit points accumulated. Depending on the number of demerit points drivers reduced their frequency of traffic offences.

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<sup>102</sup> 'Drink Driving and Licence Penalty Points – Denmark' *Angloinfo*, 2017 <<https://www.angloinfo.com/how-to/denmark/transport/driving/drinking-penalties>> on 4 February 2017.

<sup>103</sup> Abay K, 'Monetary or Non-Monetary Instruments for Safe Driving: Panel Data Evidence On the Effect of Demerit-Point-System in Denmark' University of Copenhagen, 2014, 7.

<sup>104</sup> Abay, 'Monetary or Non-Monetary Instruments for Safe Driving', 7.

<sup>105</sup> A conditional suspension implies that you must pass both practical and theoretical driving tests within some period (usually 3-6 months) to keep your driving license.

#### **4.4 Conclusion**

The rules and regulations enforced by the police lead motorists to deter from committing traffic offences. In addition, the inclusion of the demerit-point-system as a penalty, had more far reaching results in comparison to the usual monetary fines that are usually imposed.

## **CHAPTER 5: FINDINGS AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter outlines the findings, recommendations and conclusion of the study. The aim of the study was to determine the measure of deterrence of Kenyan traffic legislation.

### **5.2 Findings**

#### **a) Effective legal framework**

Chapter Three critically analysed the legal framework for deterring motorists from the traffic offences. The study found that enacted legislation is sufficient in handling traffic offenders with sufficient penalties such as imprisonment or fines.

#### **b) Poor enforcement of traffic legislation**

The presence of competent legislation does not amount to proper enforcement, such as the case of Kenya. The vice of corruption, is prevalent between motorists and police officers resulting in a major breakdown of the system and laws in place. Motorists, even those with knowledge of traffic laws still go on to violate them, because they know that they will bribe a police officer and get away with the offence. Therefore, traffic laws are somewhat negated in practice leading to fatal road accidents and fewer apprehended drivers. Further, enforcement agencies such as the NTSA has to rely on other bodies to support their enforcement operations. This makes most of the work that they do, null and void because they cannot follow through on their own authority.

#### **c) Motorists' abhorrent behaviour**

Generally, Kenyan motorists have bad road behaviour such as overlapping and driving over pavements. This is not changed by the legal framework on traffic offences. Motorists break laws on speeding, drunk driving and even causing death by dangerous driving. This can be attributed to learned behaviour that is discussed in the sociology-based theory, therefore deterrence of traffic offences is hampered.

### **5.3 Recommendations**

The study recommends that:

1. Driving curriculum to be initiated from the age of 16 in order to shape the attitude of young drivers before they start the practical course at 18 years. The proposal to lower the minimum age for a provisional licence to 16 years would be tied to a specific

‘minimum learning period’ of up to a year. This would give teenagers sufficient experience of the road before they are allowed to sit their test.

2. Setting specific targets for enforcement agencies which will require them to enforce traffic legislation.
3. Complete enforcement of traffic regulations of 2015.
4. Application on non-monetary penalties such as the demerit-point system
5. Use of technological systems such as instant fine system, and traffic cameras to implement road safety measures.

#### **5.4 Conclusion**

The hypothesis was that the proper enforcement and implementation of enacted traffic legislation can deter the commission of traffic offences and lower road fatalities.

The study has proved that the hypothesis is valid, based on the analysis of traffic legislation as well as the study of Denmark’s traffic laws.

## APPENDICES

### APPENDIX 1

| Accidents         | Feb-July, 2003 | Feb-July, 2004 |
|-------------------|----------------|----------------|
| Fatal accidents   | 1,047          | 616            |
| Serious accidents | 2,110          | 1,199          |
| Slight accidents  | 3,445          | 2,092          |

A report by the Ministry of Roads and Communication released the statistics of road accidents for a period of six months between the year 2013 and 2014 to show the effectiveness of the Traffic (Amendment) Rules, 2004. Due to the proper enforcement of the Rules and the no-nonsense reputation of John Michuki, a large number of motorists adhered to them resulting in reduction of speeding offences. The Rules, therefore deterred the traffic offences from taking place on roads.<sup>106</sup>

### APPENDIX 2

|             | General speed limit | Comments  |
|-------------|---------------------|---|
| Urban roads | 50 km/h             | For heavy vehicles 50 km/h shall be obeyed even if there is a higher local limit                      |
| Rural roads | 80 km/h             |   |
| Motorways   | 130 km/h            | About half of the motorway network has a signed speed limit of 110 km /h especially around the cities |

The Road Directorate regularly publishes a speed barometer, where the speed development on different road types is monitored. Over time, there is a general decline in the mean speed.<sup>107</sup>

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<sup>106</sup> 'Transformation of Road Transport Report' Ministry of Transport and Communication, 2004.

<sup>107</sup> ITF, 'Road Safety Annual Report' OECD Publishing, 2015, 140.

### APPENDIX 3

|                              | 1980   | 1990   | 1995   | 2000  | 2011  |
|------------------------------|--------|--------|--------|-------|-------|
| Casualties in road accidents | 15 751 | 11 287 | 10,573 | 9,590 | 4,259 |
| Of which killed              | 690    | 634    | 582    | 498   | 220   |
| Seriously injured            | 8 477  | 6 396  | 4,259  | 4,259 | 2,172 |

The number of Danes injured in traffic accidents has continuously decreased. Since 1971, when the number of traffic casualties set a sad record of 1,213 casualties, this number has decreased. In 2011, the number reached the lowest level yet, when 220 were killed in traffic accidents. Contributory factors were the introduction of speed limits and mandatory use of seatbelts in the early 1970s.<sup>108</sup>

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<sup>108</sup> 'Denmark in Figures', 2013

<<http://www.dst.dk/Site/Dst/Udgivelser/GetPubFile.aspx?id=17953&sid=dkinfigures>> on 4 February 2017.

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