

# Administrative Adjudication of Road Traffic Offences (AARTO) Amendment Bill, 2015

PRESENTATION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON TRANSPORT  
6 September 2016



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## Who is Justice Project South Africa?



Justice Project South Africa (NPC) is a non-profit organisation which was primarily established to represent and protect the rights of motorists.

It was formed in 2008, against a backdrop of mounting abuses in traffic law enforcement and alarming levels of corruption.

Since then, it has played a pivotal role in a number of key areas, including but not limited to educating and representing its members and the public alike, tackling corruption head on, addressing abusive and unlawful practices by traffic law enforcement authorities, counteracting misinformation and influencing legislation.

One of JPSA's core functions is to strive towards proper, effective and ethical law enforcement, which is free of corruption; by acting as a "watch dog" over authorities whilst engaging with them, and in so doing contributing not only to the advancement of Justice, but to further have a positive impact on road safety.

## A points-demerit system is decades overdue



The introduction of a points-demerit system for South Africa, which was first suggested in the 1950's; is more than six decades overdue.

The AARTO Act is 18 years old this year and is now old enough to both, drink and drive, yet we are still no closer to introducing a points-demerit system.

JPSA has been one of the most vocal proponents of the introduction of a points-demerit system and remedial driver programmes for ages now, **but disposing of due legal process and ignoring and violating the Constitution is not the way forward.**

## What we welcome in the AARTO Amendment Bill



- ▶ The repeal of Section 21 of the AARTO Act, which clearly resulted from JPSA's 2013 submission on the AARTO Amendment Bill, is **most welcome**.
  - ▶ Traffic fines **are not debts** and should **never** be allowed to be regarded as being debts.
  - ▶ The warrant of execution was unconstitutional from the outset and should **never** have been included in the AARTO Act in the first place.

Unfortunately, that's about full extent of the positives we can find in it since it is and remains what appears to be the "**Autocratic** Adjudication of Road Traffic Offences Act".

## What we don't welcome in the Bill



Despite having had more than two years (in fact, 3 now) since publishing the AARTO Amendment Bill for public comment to do a proper job of addressing what is so wrong with the AARTO Act, all the Department of Transport has done is seek to further dispose of due process in order to save its “Agency” and issuing authorities money and increase their profits by reducing the requirements for service to little more than a farce.

In so doing they have proven beyond any reasonable doubt what many felt all along... That the AARTO Act and traffic law enforcement in general has nothing whatsoever to do with road safety and everything to do with generating revenues!

## “Electronic service”



The proposed definition of “electronic service” is nonsensical and blindly ignores each and every fundamental principle of law insofar as it relates to the service of legal documents.

It also presumes that all licensed drivers and/or vehicle owners are financially privileged and/or technologically competent enough, as well as have access to the internet; to be in a position to be served with infringement notices and courtesy letters by email/the internet/text messaging.

“Electronic service” as contemplated herein will also undoubtedly provide internet scammers with an additional easy avenue within which to perpetrate cybercrime and have a knock-on effect on the state of the Law in general.

## Why is proper service important?



Each and every process in the AARTO Act is reliant upon the service of documents since without the proper service of an infringement notice, **none** of the other processes can **lawfully** ensue.

The service of legal documents is regulated by the Magistrates' Courts Act, the Superior Courts Act, the Uniform Rules of Supreme Court Practice, the Criminal Procedure Act, the Interpretation Act and the Electronic Transactions & Communications Act.

**ALL** other legislation should take its lead therefrom, particularly where it deals with the prosecution of infringements and/or offences and should not try to derogate from properly contemplated provisions of law.

## Reliance upon the presumption of service



It has become the habit of the Agency and its Registrar to rely almost solely upon the presumption of service contained in Section 30(2) of the AARTO Act.

In almost **every** instance where the Registrar has issued an enforcement order against an accused person over the past five financial years, it is evident that neither the infringement notice, nor the courtesy letter was served upon the accused.

This is evidenced by the SA Post Office's own "secure mail" (which we maintain is **not** registered mail) tracking service which the Agency itself incorporates into its own website and could easily reference before proceeding to the subsequent stages in the AARTO Act.

## The presumption of guilt



Despite the fact that Section 35(3)(h) of the Bill of Rights under the Constitution holds that “every accused person has the right to be presumed innocent [until **proven** guilty]”, the **AARTO Act holds the exact opposite.**

There is **no process** and/or sanction under the AARTO Act which can ensue unless an accused person is **presumed guilty** from the outset.

Even Regulation 25(7)(f) of the National Road Traffic Act presumes guilt and holds that a licence disc may be refused if a warrant of arrest has been issued. A warrant of arrest is exactly what its name suggests and is **not** a document asserting that a trial has been held in absentia of the accused.

**The Department of Transport is clearly in the habit of enacting unconstitutional provisions.**

## Elective options under Section 17(1)(f)



The AARTO Act **attempts** to get around its unconstitutional presumption of guilt by providing the following so-called “elective options” once service of a document has occurred:

- ▶ Nominating the driver or person in control **within 32 days** of service of an infringement notice;
- ▶ Making representation **within 32 days** of service of a “courtesy letter”; or
- ▶ Electing to be tried in court.

The other two “options” are admitting guilt by paying the penalty at the 50% “discounted” amount, or applying to pay in instalments – and incurring the demerit-points in the process.

**ALL of these “options” are wholly dependent on action being taken by the accused.**

## The enforcement order



The issue of an enforcement order by the Registrar has the effect of blocking the issue of the following documents to any person against whom one or more has been issued:

- ▶ A driving licence; and/or
- ▶ A professional driving permit; and/or
- ▶ A vehicle licence disc.

It also has the effect of applying the associated demerit-points against the driving licence of the person against whom it has been issued.

**ALL of this happens in the complete absence of any trial and that accused person being proven guilty of the original infringement!**

## Complying with an enforcement order



Section 20(7) of the Act holds that:

*"An infringer on whom an enforcement order has been served may comply with it by paying the applicable penalty and fees **to the local registering authority or driving licence testing centre**".*

Section 20(9)(a) of the Act holds that:

*"An enforcement order must be **revoked by the registrar** if the infringer applies to the agency in the prescribed manner **and submits reasons to the satisfaction of the registrar** why an enforcement order must be revoked".*

**The Registrar issues the enforcement order to start with, without first establishing the guilt of the accused; and then gets to "adjudicate" over his own decision!**

## Replacing the Courts



The administrative nature of the AARTO Act seeks to replace the Courts, except where an accused person elects to be tried in court.

So-called “*representations officers*” get to act as Magistrates, yet the minimum requirements for their appointment are incredibly low.

A person who has served as a policeman, traffic officer, prosecutor or Magistrate for 3 years or holds a 3-year **NQF Level 6 diploma** in law, traffic or police management with no experience may be appointed as a “representations officer”.

Representations officers may not be in the employ of an issuing authority but are employed by the Agency and are reliant on it for their salaries.

## The “independence” of the Agency



In the 2014/15 financial year, the Agency received a *paltry* \*R15,300,000 in funding from Treasury.

The remainder of its total \*R128,451,208 revenues came from penalties and fees *belonging to/generated* by it.

In the same year, its postage and courier costs were \*R25,614,621 and it paid out \*R43,933,907 in salaries to a staff compliment of just \*88 employees.

\*Source: 2014/15 RTIA Annual Report

## The “independence” of the Agency continued...



In reality, the Agency is funded by monies derived directly from the issue of infringement notices and the so-called “noncompliance” of accused persons in taking action within 32 days of the service of infringement notices, upon which it subsequently raises fees:

- ▶ On a penalty of R250, the issuing authority gets R125, even if it is paid at the 50% *discount*.
- ▶ If a “courtesy letter” has been issued, the issuing authority gets R125 and the Agency gets R185 if it is paid.
- ▶ If an enforcement order has been issued, the issuing authority gets R125 and the Agency gets R245 if it is paid.

## The “independence” of the Agency continued...



The Agency performs several diametrically opposed functions in terms of the AARTO Act. Amongst these are:

- ▶ It acts as the **“debt” collector** for issuing authorities;
- ▶ It acts as the **issuer** of courtesy letters and enforcement orders;
- ▶ It acts as an [anything but] **independent tribunal** between accused persons, issuing authorities **and itself**.

How can the Agency and its employees be **“independent”** and **“impartial”** if more than 78% of the Agency’s revenues come from the fees and the portion of penalties it is **entitled to**?

The Agency has a **direct conflict of interests** and cannot possibly be viewed as being independent and unbiased, even by a long stretch of the imagination.

## A pathetic attempt to halt noncompliance



The proposed insertion of subsection (3) into Section 32 of the Act does nothing to halt noncompliance with the Act by issuing authorities. It reads:

*“The penalty referred to in subsection (1) may be withheld by the Authority where there is evidence of non-compliance with this Act, until such time that the Act is complied with to the satisfaction of the Authority”.*

**As soon as the issuing authority begins complying again, it is entitled to the money which arose from unlawful actions plus the Agency gets to retain such unlawfully acquired monies.**

## What the AARTO experiment has proven

### *Unlawful behaviour condoned*



The Department of Transport chooses to call the AARTO experiment in Tshwane and Johannesburg a “pilot” implementation, although the Agency’s Registrar chooses to deny that the AARTO Act is still in a “pilot phase” in legal papers before the Pretoria High Court.

In reality the provisions and processes of the Act have been **experimented with** from the outset and motorists have been treated as its *guinea pigs and lab rats* (as well as cash-cows) in the process.

**Unlawful actions and appointments have been actively implemented and condoned.**

e.g. The JMPD violated Section 30(1) & regulation 3(1)(b) for **thirty months** and the Department of Transport and the Agency **did nothing** to halt it until repeated *uncomfortable* questions were asked of the Minister in Parliament **following JPSA’s complaint to the Public Protector**.

## What the AARTO experiment has proven

### *The commercialisation of traffic fines*



Less than \*12% of traffic law enforcement is physical law enforcement for moving violations.

The rest (\*81.14%) arises from camera-based, *pay as you go* “speeding fines”, \*0.02% in *high-speed* camera offences and \*6.86% in unattended notices.

Number of Notices Captured per Type :						All IA's
	AARTO 01	AARTO 02	AARTO 03	AARTO 31	AARTO 32	Total
Year Total	721 204	1 150	4 888 858	413 262	1 088	6 025 562
% of total	11.97%	0.02%	81.14%	6.86%	0.02%	100.00%

Private companies, issuing authorities and the Agency all profit from camera fines.

**A points-demerit system simply cannot function effectively if this behaviour is allowed to continue.**

\*Source: 2014/15 RTIA Annual Report

## What the AARTO experiment has proven

### *Inconsistency is the only constant*



There is nothing consistent about the application of the provisions of the AARTO Act in the current experiment.

Almost everything is dependent on money – even the issuing of courtesy letters and enforcement orders is reliant thereon and the Registrar has admitted as much in his annual reports.

	'2012	'2013	'2014	'2015
Infringement notices	1,787,517	6,975,482	6,025,562	6,755,629
Courtesy letters	1,039,426	200,469	817,969	3,016,050
Enforcement orders	90,214	46,267	593,713	640,169

<sup>1</sup>Source: 2011/12, 2013/14 and 2014/15 RTIA Annual Reports

<sup>2</sup>Source: 2016 AGM of the Agency

## What the AARTO experiment has proven

*Inconsistency is the only constant continued...*



Inconsistent outcomes arising from representations submitted to the Agency are common.

Based on materially **identical arguments** presented in representations, it often happens that around half are successful whilst the other half are unsuccessful – and a R200 “unsuccessful representation fee” gets added to the total penalty and fees which are already applicable.

An informal “review process” implemented by the Registrar sometimes results in the remainder being made successful – but not always. In 2013 the so-called “Deputy Registrar” **instructed** representations officers to make all pending representations for one accused unsuccessful after inconsistency was pointed out to him.

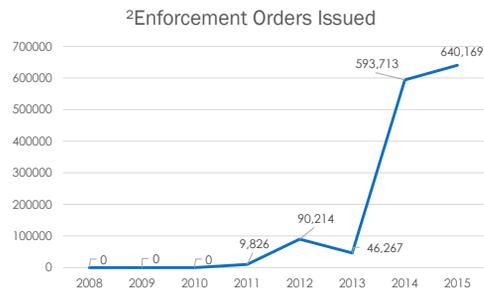
**When the accused then elects to be tried in court, the Registrar arrogantly asserts that this constitutes those accused persons “manipulating the system because they are dissatisfied with the outcome of representations”.**

## What the AARTO experiment has proven

*The Agency has found a new toy to ensure its financial viability*



Issuing enforcement orders has played a **significant role** in increasing the Agency’s revenues but don’t let’s ignore the fact that the RTIA and Treasury apparently **allowed** the RTMC, City of Johannesburg and JMPD to steal monies from them!



<sup>1</sup>Source: 2010/11 to 2014/15 RTIA Annual Reports

<sup>2</sup>Source: 2010/11 to 2014/15 RTIA Annual Reports and 2016 AGM of the Agency

## What the AARTO experiment has proven

### *Centralising the issuing of traffic fines is beneficial*



Not everything about the AARTO experiment is negative.

Centralising the issue and administration of traffic fines has had the effect of providing valuable statistical information and monitoring of **just four** of the issuing authorities in South Africa.

SAPS has not been monitored however, even though SAPS is an issuing authority and has been from the outset.

SAPS **does not comply** with Section 17(1) of the AARTO Act and still, to this very day **unlawfully** issues SAPS J534 written notices (Section 56 of the Criminal Procedure Act) in Tshwane and Johannesburg – **and the Agency allows SAPS to violate the AARTO Act.**

**The remaining, more than 200 issuing authorities in SA are not yet monitored – and they should be.**

## The AARTO Act is unconstitutional



As bitter a pill as it may be to swallow, there are **many unconstitutional and problematic provisions** in the AARTO Act. A few are:

- ▶ The presumption of guilt throughout the Act;
- ▶ A time limitation to nominate the actual driver or person in control of a vehicle is imposed;
- ▶ The inability of an owner to nominate the driver in the case of an offence;
- ▶ The Registrar is granted way too much power and his decisions are not subject to proper review, except at great expense and/or tedious legal action;
- ▶ The Agency is not and never can be an independent tribunal;
- ▶ *Legalised* avoidance of demerit-points is built into the Act, creating inequality before the law;
- ▶ The limited geographical rollout created inequality before the law from the outset; and
- ▶ The AARTO Act is in conflict with other legislation.

## Trying to solve the problem



Albert Einstein said:

***“We can't solve problems by using the same kind of thinking we used when we created them.”***

Sadly, this is exactly what “we” are trying to do!

## What can be done to correctly address the problems? *Defining the problem*



Correctly understanding and defining the problem is essential to formulating a workable solution. The core problems are as follows:

- ▶ South Africa has a high injury & mortality rate arising from vehicle collisions;
- ▶ Many (or most) road users have little or no regard for the law;
- ▶ Law enforcement and prosecution is largely ineffective and focussed on revenue;
- ▶ Law enforcement is not a national competency – *authorities* do as they please;
- ▶ Finger-pointing is the order of the day;
- ▶ Corruption is rife & is not being properly tackled; and
- ▶ Prosecution instruments & practices don't properly address the real issues.

## What can be done to correctly address the problems? *Solving the problem*



The following must happen in order to address the problem:

- ▶ Corruption and maladministration must be **eradicated**;
- ▶ Traffic law enforcement must become a national competency, alternatively proper **control** must be exercised over **all** traffic law enforcement authorities;
- ▶ Traffic law enforcement **must focus on moving violations**;
- ▶ Prosecution **must become effective** without violating the constitution;
- ▶ A **proper** prosecution instrument, complete with competent courts must come about;
- ▶ An **effective points-demerit** system must urgently be implemented; and
- ▶ All role-players **must be held accountable**.

## What can be done to correctly address the problems? *Proper legislation can contribute greatly towards goals*



Legislation cannot ever be viewed as being a *cure-all* to all of the problems which exist **but** it can have a very powerful effect in influencing the outcomes.

The drafting and enactment of proper legislation can have a significant effect on addressing the problem and achieving the desired goals, **provided that** those who are entrusted with enforcing it **do so to the letter and are properly controlled**.

The Agency has already proven beyond any reasonable doubt that it is not under proper control and that it has **no control whatsoever** over the issuing authorities.

This **must change** if South Africa is going to see even a glimmer of hope arising from traffic law and its enforcement.

Given just three months, JPSA could draft legislation from scratch which would not only be constitutionally sound, but would also incorporate the necessary checks, balances, controls and a remedial driver programme which will make it work for the good of the nation – not the just pockets of greedy authorities and private companies.

Thank you for this opportunity and your attention  
*All questions are welcome*



My contact details appear below:



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Incorporated as a non-profit company under the Companies Act, 2008  
Registration Number 2010/019972/08

"All that is required for the triumph of evil is that good men and women do nothing" - Edmund Burke

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