Justice Project South Africa (NPC)
Incorporated as a non-profit company under the Companies Act, 2008
Registration Number 2010/019972/08
Postnet Suite 97, Pvt Bag X11, Halfway House, 1685 | Tel: 011 051 6985 | Fax: 086 647 3293
Website: www.jp-sa.org

"Injustice anywhere is a threat to justice everywhere." - Martin Luther King
"All that is required for the triumph of evil is for good men and women to do nothing" – Edmund Burke

The Chairperson
Parliamentary Portfolio Committee on Transport
Parliament of South Africa
Cape Town

BY EMAIL TO: vcarelse@parliament.gov.za

Your Ref: Administrative Adjudication of Road Traffic Offences Amendment Bill [B38-15]
Our Ref: AARTO Amendment Bill, 2015

Wednesday, 31 August 2016

Dear Madam,

RE: ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES (AARTO) AMENDMENT BILL, 2015 – SUBMISSION BY JPSA

Table of Contents

Introduction

Justice Project South Africa (NPC) (hereinafter referred to as “JPSA”) has recently become aware of the fact that the Parliamentary Portfolio Committee on Transport is seeking inputs from the public and/or interested parties with respect to the AARTO Amendment Bill, 2015.

JPSA is, and has been one of those interested parties since shortly after the initial promulgation of the AARTO Act in the Cities of Johannesburg and Tshwane. It was also invited to enter into a Memorandum of Understanding/Agreement with what is currently called the Road Traffic Infringement Agency in 2014; in the interests of advancing the AARTO Act, and which agreement was never ratified due to the Agency failing to finalise it.

We therefore feel that it is not only necessary for us to make this submission on behalf of our members, but in the wider public interest and the interest of road safety in general.

Due to the fact that the AARTO Act and its Regulations does not constitute some theoretical, proposed legislation, our submission shall not be limited to the few proposed amendments contained in the Bill, but shall delve into the overall constitutionality of the AARTO Act and examine just some of the abuses which have arisen out of its experimental implementation.

We feel that this is absolutely necessary in order to not only make sense of our inputs, but to actively attempt to prevent the further potential harm which will most certainly arise if these issues are not addressed prior to the unreasonably long-delayed national roll-out of a points-demerit system for South Africa.

We therefore respectfully submit that the prolixity of our submission is strictly necessary and state that we are of the sincere hope that the Parliamentary Portfolio Committee on Transport will take very seriously what is recorded herein and more importantly, ensure that the necessary interventions occur without further delay.

Whilst we do not wish this to be construed in any way as constituting a threat, we feel it necessary to point out that JPSA has tired of the disingenuous behaviour which has been exhibited towards it by the authorities when trying to address their wanton misapplication of the provisions of the AARTO Act and therefore, we will not hesitate to approach the Court in order to address issues which the authorities are apparently unwilling to address on a reasonable and/or diplomatic level.

This is evidenced by the fact that, after being blindly ignored by the Registrar and the Agency, as well as two issuing authorities and the Minister of Transport, JPSA has approached the Pretoria High Court under case number 30665/2016, seeking, *inter alia* a declaratory order with respect to the term "registered mail", which is contained in the AARTO Act but is undefined in law.

It is submitted that it should not be necessary for JPSA to approach the Courts over matters which could easily be resolved and/or rectified through reasonable interaction with one another and that the wanton waste of taxpayers' money by State entities in attempting to defend the indefensible is irresponsible at best. Just because these State entities have access to the public purse should not mean that they abuse it and decide to test our resolve in the hope that they can *out-lawyer* us.

As will become apparent in this document, the service of AARTO infringement notices and other documents is merely the starting point in a long string of other issues surrounding the AARTO Act and its practical implementation, however it is the very foundation upon which all other processes follow.

Submissions relating to the AARTO Amendment Bill, 2015 itself

After having made an extensive submission on the AARTO Amendment Bill which was published for public comment in 2013, JPSA has noted the resultant proposed amendments contained in the AARTO Amendment Bill, 2015 published at the SA Government website on 30 November 2015 and has the following submissions to make thereon:

Clause 1 - Definitions

Clause 1(a)

We have no objection or comments relating to the proposed amendment of the term **"acceptable identification"** being amended as proposed.

Clauses 1(b) and (c)

As previously stated in our 2013 submission, it is our view that the renaming of the "agency" to "Authority" is not only pointless, but stands to introduce a further element of confusion into the Act.

The term "issuing authority" is undefined in the Act and this is problematic for a number of reasons, not least of which is the confusion that arises when referring to the "issuing authority" on the one hand and referring to the "Authority" in the same sentence. While it may be argued that by simply inserting a definition for the "issuing authority", this problem will be addressed, it is our view that it will not.

It is submitted that whether this entity is called "the Agency" or "the Authority" is neither here nor there and wanting to change it represents little more than it wanting to sound more impressive, important and/or authoritative. This really isn't necessary.

Furthermore, the Agency recently "relaunched its brand" to great fanfare and with no expense spared, and in doing so, redesigned its logo and branding of *inter alia* vehicles and stationary. If it now gets renamed, further monies will be wasted for nothing more than this exhibition of foolish pride.

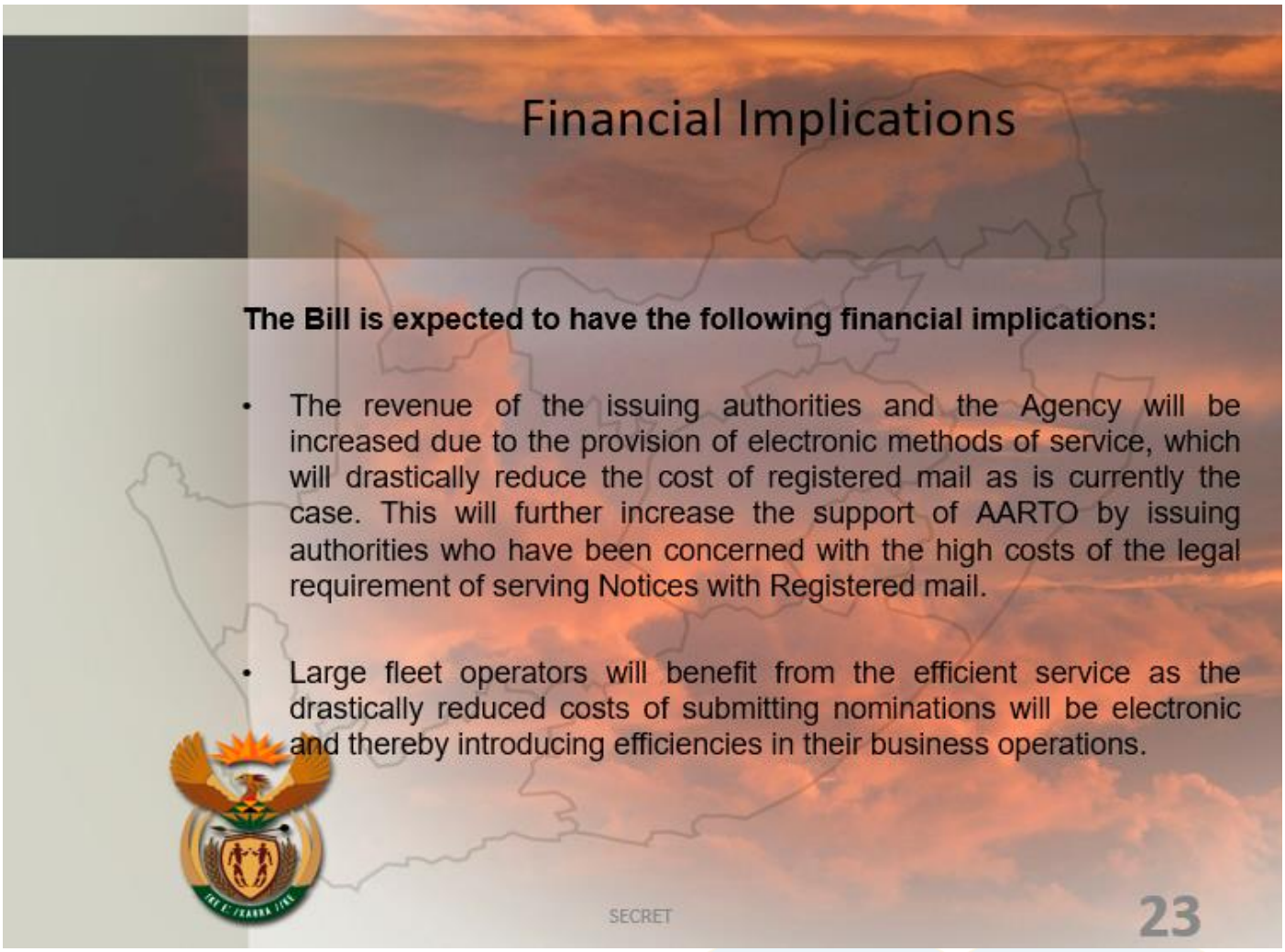
- ❖ It is therefore our recommendation that name of the Agency be left as is.

Clause 1 (d)

We have a significant issue with the insertion of the definition **"electronic service"** into the AARTO Act, not only because of the fact that we have fundamental objections to the proposed loose methods of service, but because of the fact that such amendments need to be carefully considered in the broader context of the state of the Law itself in South Africa.

Whilst we do not have a fundamental issue with the *"modernisation"* of methods of service, the motivation and reasoning behind this move on the part of Department of Transport, the Agency and the issuing authorities has nothing to do with modernising anything, but is rather premised upon cost savings and profitability motivations.

This is evidenced by the so-called "secret" presentation the Department of Transport made to this very committee in May this year wherein it was blatantly stated that the objective thereof was to save money and increase revenues for the issuing authorities [and the Agency].



What's the big secret? We all know profits drive these people.

It is submitted that if the term "electronic service" is to be further defined in the AARTO Act, then this is simple enough to achieve. All that needs to happen is for it to be defined as follows:

"electronic service" *means the service of a document contemplated in this Act by means of the eRegistered Mail facility offered by the South African Post Office ("SAPO").*

The "eRegistered Mail" facility is an opt-in service offered by SAPO and is further contemplated in Section 19(4) of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) and, albeit that this provision is not properly phrased when considering that the eRegistered Mail service was only [1]launched by SAPO in May 2016, the fact of the matter is that it exists and there is no need for the AARTO Act to attempt to reinvent the wheel.

Apart from the foregoing the following points are relevant to this proposed amendment:

[1] "Post Office launches e-registered mail" http://www.fin24.com/Tech/Companies/post-office-launches-e-registered-mail-20160519

Justice Project South Africa (NPC)

"Communication by means of data messages" – Clause 1(d)(a)

This proposed "definition" is extremely and unnecessarily broad and is therefore wide open to abuse. It reads as follows:

> *communication by means of data messages, including data attached to, incorporated in or logically associated with, other data that may be electronically retrieved;*

The aarto.gov.za website contains within it a link to logical data displayed on a web page which contained in the National Contraventions Register. This link says [2]"query my fine". It does not say, "click here to be served and save us money instead of properly serving you".

In any event, JPSA regularly uses the aarto.gov.za website to query the status of people who phone it to enquire, amongst other things, why it is that their licence disc is being withheld.

If the illogical conclusion is going to be reached that, by virtue of the fact that an unknown person queried this database, and as a result the accused person is going to be deemed to have been served, then this can only be described as an abomination of the term "service" as it relates to legal matters and in particular, the allegation of violation of the law.

Furthermore, social media platforms also facilitate communications via logically associated data that may be electronically retrieved and therefore it would appear that simply using Twitter, Facebook, Instagram, etc. to *serve* AARTO documents would also be covered by this broad definition. This should never be allowed since false profiles are prolific in social media.

We do however acknowledge that the RTIA has apparently entered into private arrangements with a few companies wherein it has provided some sort of limited access to these entities, so that they may electronically interface with eNaTIS and the National Contraventions Register.

Albeit that these private arrangements are not generally of public knowledge and we understand that this has only been offered to a *select few* in its current implementation, it is submitted that such an arrangement may be beneficial to juristic entities who have the need to speedily and efficiently nominate drivers of vehicles registered in the name of their companies, etc.

It is our submission that if this service has been found to work, then it should be supplied at no cost to the end user, on an opt-in basis, and opened up to anyone and everyone who wishes to make use of it in order to streamline processes.

---

[2] http://www.aarto.gov.za/index.php/query-my-fine

- We therefore recommend that this extremely loose and broad definition be scrapped and thoroughly researched consideration be made towards coming up with a proper version thereof.

"e-mail messages between the Authority and an addressee" – Clause 1(d)(b)

The need for proper service is a very real need, and simply cannot be overemphasised. In spite of this fact, it would appear that someone appears to be of the opinion that it is not, alternatively that they simply don't care about this.

Whist agreement can be reached between two or more parties with respect to service by nominated email address/es in compliance with Rule 4A(1) of the Supreme Court Practice, it cannot be deemed by any law that the need for consent thereto may be routinely waivered, simply because the Agency wishes to save itself and the issuing authorities input costs and maximise profits.

This is more especially true in light of the fact that some people change their email addresses for one reason or another, not least of which is a change in their employment. If a person opts-in and/or consents to service by email, the responsibility for notifying the affected parties shifts directly to that person however there is always a very real risk that they will forget to do so and in so doing, service will not take place.

The further existence of inbuilt "junk mail" folders in email client software, coupled with spam filters built into email servers could also very easily hamper and/or defeat any attempt to serve documents via email and this must also be considered.

Just because a presumption is built into Section 30(2) of the Act does not mean that the purpose thereof is to routinely presume service has been effected when the likelihood of this being true is low.

Furthermore, currently, neither the National Road Traffic Act, nor its Regulations prescribe that any person must have an email address, let alone that such a person must inform a licensing authority of any changes in that email address.

It is submitted that should the Department of Transport wish to make this a requirement, then the Department of Transport must in turn, provide each and every person who possesses a driving licence and/or has a vehicle registered in their name with such an email address and the means and necessary equipment and data bundles to access that email address – free of charge.

The Department of Transport appears to herein have found itself getting caught up in SANRAL's attempts to posture the mass resistance to e-tolls as being an issue of the *"bourgeois society"* and extending it to the commission of road traffic offences. Nothing could be further from the truth and the fact that the Department of Transport is apparently so blind to this fact is extremely worrying.

What is also extremely worrying is the fact that all concerned seem to be so blissfully unaware of and/or insensitive to the proliferation of internet scams. While some of these are quite easy for a trained person to spot, some of them can only be defined as being ingeniously convincing.

Surely it cannot have been the intention of the legislator to facilitate fraud and scams? Sadly however, if this so-called "definition" is enacted, this is exactly what will happen and it will have a prejudicial effect on members of the public, while the Department of Transport, the Agency and everyone else for that matter simply sits back and says "it's not our problem – you should have checked before giving criminals your money".

Lastly, while we are acutely aware of the fact that this proposed definition may have been authored by a person who is/was ignorant of the fact that the SAPO was in the advanced stages of planning and then actually rolling out the "eRegistered Mail" service it now offers, the fact remains that it does do so and this method of service is sanctioned by law. Therefore, there is absolutely no reason whatsoever for such a preposterous "definition" to exist.

- It is for the reasons stated above that JPSA strongly opposes this proposed definition and recommends that it is scrapped, alternatively that a proper definition which incorporates the SAPO's "eRegistered Mail" service be defined. It is however suggested that there is no real need to do so, given the existence of Section 19(4) of the Electronic Communications and Transactions Act, 2002.

- We also point out that our views hereon are further articulated in our commentary on clause 9 of the AARTO Amendment Bill.

Text messaging by the Authority to the recipient's cellular telephone – Clause 1(d)(c)

Once again, it is submitted that nowhere in the National Road Traffic Act or Regulations, and/or in any South African legislation is it prescribed that anyone must possess a cellular telephone of any shape, form or description and/or that they must have airtime and/or data available to them.

While modern smartphones have the ability, through MMS technology, to send and receive "text messages" (commonly referred to as SMS messages) of unlimited characters, many basic cellular phones, which operate solely on GSM do not.

Although smartphones are becoming less costly, the vast majority of cellular phones in use in South Africa are not smartphones and it is submitted that it will be a long time before every cell phone user has a smartphone.

GSM text messaging is limited to 180 characters, including spaces and simply will not cater for text messages exceeding that quantum without truncating them, alternatively splitting them into multiple messages. Additionally, such basic cell phones are generally incapable of accessing the internet, so there's no point in referring the recipient to a website.

An AARTO 03 infringement notice, for which this intended means of *service* seeks to cater contains approximately 6,400 characters, excluding the photograph of the alleged infringement. GSM text messages additionally do not cater for graphics.

Just how it is that the legislator thinks that this technological fact can be ignored is completely beyond us and again demonstrates the apparent belief of the legislator that simply because a person owns a vehicle and/or possesses a driving licence, they must necessarily also possess a smartphone and more importantly, know how to use it.

Again, it is submitted that should the Department of Transport wish to make this a requirement, then the Department of Transport must in turn, provide each and every person who possesses a driving licence and/or has a vehicle registered in their name with a smartphone, along with the necessary data bundles to facilitate the delivery of such "text messages" – free of charge.

Lastly, the actual delivery of text messages by cellular service provided is in no way a guaranteed service and therefore, using it for service of legal documents is totally undesirable.

- ❖ It is therefore recommended that this provision be scrapped in its entirety.

General comments on the term "electronic service"

It is abundantly clear that the legislator is pandering to the desires of the Agency and the issuing authorities who have all chosen to buy into the commercialisation of traffic law enforcement by seeking to reduce the costs of proper and legal service; and in so doing, seek to maximise their profits arising from traffic fines revenues.

This constitutes a further abomination of what can only be described as being the con-job of posturing the AARTO Act as being in the interests of road safety when in fact, it represents nothing more than a thinly veiled attempt to profit from delinquency.

Traffic authorities, the State Owned Corporation of the Road Traffic Infringement Agency, municipalities and/or government should not be seeking to profit at all from noncompliance with traffic laws but sadly, this is exactly what the whole lot of them are doing.

So what if it costs R25 (twenty-five Rand) to post an infringement notice by registered mail? That means the issuing authority will *only* realise a gross profit of R25 of the minimum penalty payable in terms of Schedule 3 of the AARTO Regulations if that fine is paid within 32 days of service.

If the Agency has to issue and post a courtesy letter and enforcement order, it will realise *only* R120 (one hundred and twenty Rand) for service thereof by "registered mail", given the fact that the fee associated with a courtesy letter and enforcement order levied by it is R60 (sixty Rand) each.

In reality however, very few infringement notices issued are for the minimum penalty amount and at the upper end of the scale, the issuing authority will realise a gross profit of R725 (seven hundred and twenty-five Rand), while the Agency will realise a gross profit of R820 (eight hundred and twenty Rand).

Of course we are mindful of the fact that not all, and indeed, relatively few infringement notices are paid at any stage of the AARTO process, however it is submitted that at least one of the reasons therefor is that not one of these authorities have bothered using the registered letter service provided by the SAPO and have instead, chosen to utilise the grossly inefficient "secure mail" service the SAPO came up with.

The "secure mail" service is both, materially and operationally different to the "registered letter" service and has proven itself to be grossly inefficient in achieving proper and legal service of AARTO documents of all flavours.

Since this matter is *sub judice* at this juncture, we shall not delve further into the differences between the two services at this juncture but suffice to say that it is our submission that if AARTO documents were properly served, the prospects of people taking advantage of the so-called "discount" would be significantly higher and thus, the collection rates and profits associated therewith would increase.

There may be many justifiable reasons for considering modernising requirements for service and indeed, introducing electronic service, however – based on the premise that its intent is to make things less costly for these authorities as is averred to by the Department of Transport itself – the reasoning current behind it is not only nonsensical, but is morally repugnant.

Clause 1(e)

The proposed amendment of the word "infringement" from its current definition to read: ***"infringement"*** *means any act or omission in contravention of this Act or road traffic legislation* is little more than nonsensical and appears to demonstrate the fact that the legislator has not read the AARTO Act and/or understood its contents.

Firstly, the term "offence" is separately defined in the Act as ***"offence"*** *means an offence prescribed under section 29 (a)* and an offence is an act which constitutes a contravention of road traffic legislation.

Secondly, while an infringement in terms of the AARTO Act carries with it no citation of a "previous conviction" (criminal record) when a person is convicted or admits guilt thereon, an offence most certainly does.

For example, driving under the influence of alcohol or a drug having a narcotic effect is most certainly a crime for which a convicted person not only faces the imposition of a fine and a criminal record, but additionally faces the possibility of imprisonment. Quite correctly, this criminal offence is defined in Schedule 3 as an offence.

While the dictionary definition of the word "infringement" does indeed mean "the action of breaking the terms of a law, agreement, etc." it cannot be deemed to be nearly as serious as committing a criminal offence as is defined in Schedule 3 of the AARTO Regulations.

- When considering this proposed amendment/insertion, it is also extremely important to take note of our comments with respect to clauses 1(f) and 1(g) hereunder.

Clauses 1(f) and 1(g)

The proposed deletion of the terms "major infringement" and "minor infringement" raises a couple of interesting dilemmas.

Firstly, there is no proposal that the Minister should not categorise the charges in Schedule 3 into "major infringements", "minor infringements" and "other offences" as is defined in Section 29(a) of the AARTO Act contained anywhere in the AARTO Amendment Bill.

Secondly, albeit that the Minister has not complied with this prescripts of Section 29(a) in the current version of the AARTO Act in drawing up Schedule 3, it is submitted that Section 17(1)(f)(i) of the AARTO Act which reads that an infringement notice must inform the [alleged] infringer that he or she may *"pay the penalty, as reduced by the discount contemplated in paragraph (d),* ***or***

make representations to the agency, in the case of a minor infringement*"* (my emphasis), the fact still remains that both of the terms – "major infringement", "minor infringement" actually do require definition in the Act.

- ❖ It is for these reasons that we submit that clauses 1(f) and (g) should not be enacted.

Clause 1(h)

We have no material objection to the deletion of the term "National Contraventions Register" however this needs to be read in conjunction with our comments regarding clause 1(i).

Clause 1(i)

It is submitted that the choice of term proposed herein as being the "National Road Traffic Offences Register" is entirely inappropriate.

The reason we say so is that the term "offence" is separately contemplated in the AARTO Act and the term "infringement" is, by virtue of the fact that it carries no criminal record with it, naturally less serious than an "offence".

- ❖ It is our recommendation that if the term "National Contraventions Register" is going to be changed at all, then it should be changed to the "National Road Traffic Contraventions Register".

Clause 1(j)

We have no material objection to the amendment of the definition of the term "adjudications officer".

Clause 2 – Section 4 – Objects and functions of agency

Clauses 2(a) through (d)

Whilst we do not have any issue whatsoever with the proposed repeal of the provisions in Section 21 of the AARTO Act relating to the warrant of execution which is contemplated in clause 7 of the AARTO Amendment Bill and realise that this repeal will naturally affect the wording and paragraph numbering of other parts of the Act, it is our submission that the "functions of the Agency" as it currently stands, even after the proposed amendments are applied are incorrect, and in some cases, in direct conflict with the enabling provisions of the Act.

The Agency receiving notifications from the issuing authorities

The Agency is the custodian of what is currently termed the "National Contraventions Register" upon which all infringement notices are *supposed to be* issued.

Whilst Section 4(2)(a) of the Act was undoubtedly drafted prior to the experimental implementation of the Act in the Cities of Johannesburg and Tshwane and the legislator could not have been reasonably expected to know how an as yet undeveloped IT system would operate, it is submitted that placing an administrative burden upon any and all issuing authorities to inform the Agency where an [alleged] infringer has failed to comply with an infringement notice issued in terms of section 17 of the Act is both, administratively burdensome and unnecessary in terms of the practical implementation of the AARTO Act.

Furthermore, what this provision blindly ignores at this juncture is that each and every infringement notice issued nowadays lists no banking details whatsoever upon it and the various payment points at which payment may be made and/or received are directly linked to eNaTIS and therefore automatically update the National Contraventions Register if/when such payment is made.

Additionally, each and every current form with respect to an "elective option" an alleged infringer may wish to follow, complete and submit has only the address details of the Agency within the instructional portion of that form.

REPRESENTATION - AARTO 08

INSTRUCTIONS FOR COMPLETION OF THE FORM

a. This form must be completed electronically and submitted in one of the following manners:
- posted by registered mail to: **The Road Traffic Infringement Agency, Private Bag X112, Halfway House, 1685**
- faxed to: **086 662 8861** - emailed to:**representations@rtia.co.za** - on the AARTO website: **www.aarto.gov.za**

b. The completed form must be submitted to and signed before a commissioner of oaths on presentation of the original Infringement Notice and, if applicable, the original Courtesy Letter that was issued.

c. A copy of the completed and signed form and supporting documents must be kept for your own records.

d. Receipt of the application will be acknowledged within 21 days, failing which it must be re-submitted by posting it by registered mail to the address given above.

e. If you were not the driver or person in control of the vehicle please complete form AARTO 07 to nominate the correct driver or person in control.

f. Individuals need not complete the first two lines of Part B. Organisations must provide the details of the registration number of the organisation (eg CC, company or trust registration number) and the details of a representative (Surname, First names, ID number, Cell, Email, etc.) who must sign the form on its behalf.

Note: A Representation fee of R200 will be charged in the case of unsuccessful Representations.

Example of an AARTO 08 representation form. ALL forms contain only the address details of the Agency.

Just how it is that it is deemed to be currently valid that issuing authorities should waste time and effort scratching around in the National Contraventions Register to find those infringement notices which have not been *complied with* is totally beyond our comprehension since this should be an automated process of eNaTIS and the National Contraventions Register.

- ❖ It is therefore our submission that this "function of the Agency" and the commensurate obligation upon the issuing authority to inform it of the so-called failure of an [alleged] infringer to *comply* with demands that are made upon him or her in an infringement notice are moot since it is the Agency which is the sole custodian of the National Contraventions Register.

Issuing and service of enforcement orders, and the recordal of demerit-points

If one reads and understands the AARTO Act properly, the function of issuing and serving an enforcement order in terms of Section 20 of the Act is not a function of the Agency as is contemplated in Section 4(2)(d) of the Act.

Neither is the service of such enforcement orders and the recordal of demerit-points against the particulars of alleged infringers who are found guilty in absentia and without any evidence of their guilt being led by their accuser.

Instead, these functions are the sole reserve of the Registrar, who is a natural person and is not a juristic or statutory entity which the Agency is. These provisions are prescribed in Section 20(1) of the AARTO Act which reads as follows:

> *"If an infringer fails to comply with the requirements of a notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2) (b) or has failed to appear in court as contemplated in section 22(3)(a), as the case may be,* ***the registrar must****, subject to subsection (2)—*
>
> *(a) issue an enforcement order, serve it on the infringer and update the national contraventions register accordingly;*
>
> *(b) record the demerit points incurred by the infringer in the national contraventions register;*
>
> *(c) notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and*
>
> *(d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27." (my emphasis)*

It is somewhat *surprising* that apparently, even the original legislator apparently did not apply their mind properly when drafting this legislation, however this does not alter the fact that the current functions of the Agency as are recorded in the Act are materially and factually incorrect, as well as being in direct conflict with the enabling provisions of the Act.

- ❖ It is therefore our recommendation that this matter should be referred back to the legislator to be corrected.

Clauses 3 through 5

We have no comments to submit on these proposed amendments.

Clause 6 – Section 20 – Enforcement order

We have no material objection to the proposed amendments to section 20(3) of the AARTO Act, however it is our view that the repeal of Section 21 does not go nearly far enough in curtailing the extraordinary powers vested in the Registrar. In this regard, we refer you to what is stated under the heading "Constitutional challenges the AARTO Act faces" later in this document.

Clause 7 – Section 21 – Warrant

We welcome the proposed repeal of Section 21 of the AARTO Act, which as previously stated has come about as a direct result of our 2013 submission on the proposed AARTO Amendment Bill at that time. Repealing this Section is the only sensible thing that could have been done.

Clause 8 – Section 22 – Trial

The proposed amendment of Section 22(1) appears to demonstrate that the legislator is unaware of the provisions of the Criminal Procedure Act, 1977 (Act 51 of 1977) and/or doesn't understand them.

Issuing authorities as they are known (but not defined) in the AARTO Act are <u>not</u> empowered to issue a summons in terms of Section 54 of the Criminal Procedure Act. They are however empowered to make a request to the clerk of the court to do so.

In order to assist the legislator, we feel it prudent to quote Section 54(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) which states:

> *(1) Where the prosecution intends prosecuting an accused in respect of any offence and the accused is not in custody in respect of that offence and no warrant has been or is to be issued for the arrest of the accused for that offence, <u>the prosecutor may secure the attendance of the accused for a summary trial in a lower court having jurisdiction by</u>*

drawing up the relevant charge and handing such charge, together with information relating to the name and, where known and where applicable, the residential address and occupation or status of the accused, to ***the clerk of the court*** *who shall-*

(a) issue a summons containing the charge and the information handed to him by the prosecutor, and specifying the place, date and time for the appearance of the accused in court on such charge; and

(b) deliver such summons, together with so many copies thereof as there are accused to be summoned, to a person empowered to serve a summons in criminal proceedings. (my emphasis)

Since no issuing authority is and/or can ever be deemed to be the clerk of the court, it stands to reason that the issuing authority cannot issue a summons in terms of Section 54 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

It is therefore submitted that no issuing authority will be able to comply with this proposed provision and the procedure as defined in the AARTO Act since it is incorrect.

Furthermore, whilst we are aware of the fact that the AARTO Act is intended to deal in the main with violations which are defined as “infringements” and are therefore regarded as being of a less serious nature it is *curious* to say the least that despite the fact that the purported purpose of the AARTO Act is to increase driver compliance with road traffic laws, nowhere in the Act and in particular in this Section is the prosecution of those who allegedly commit serious road traffic offences which are defined as “offences” in Schedule 3 contemplated.

When a person allegedly commits a serious road traffic offence as is defined in Schedule 3 as constituting an “offence” what happens thereafter is largely dependent on whether the alleged offender is stopped by a traffic officer at the time or not.

If that person is stopped, in all likelihood, they will be arrested and processed through the criminal justice system as *normal*. If however, that person is not stopped at the time, as is the case in almost all speed limit prosecution operations mounted by camera, then that person *is supposed* to be summoned to appear in Court on criminal charges.

The AARTO Act does not contemplate either of these scenarios and it is our view that, despite the fact that the Criminal Procedure Act does, the AARTO Act should do so as well, so as to provide

clarity on what should happen if a person is alleged to have committed an offence. Whilst Section 23 of the Act contemplates the simultaneous commission of an infringement and an offence, it does not contemplate the commission of an offence alone.

- ❖ It is therefore our recommendation that the entire Section 22 of the AARTO Act is redrafted in order to properly contemplate all scenarios relating to the trial of individuals accused of offences in terms of Schedule 3, as well as where they elect to be tried in Court.

Clause 9 – Section 30 – Service of documents

Clause 9(a) seeks to amend the current wording of Section 30(1) of the AARTO Act which reads:

> *Any document required to be served on an infringer in terms of this Act, must be served on the infringer personally or sent by registered mail to his or her last known address.*

to read as follows:

> *Any document required to be served on an infringer in terms of this Act, must be served on the infringer as prescribed including by postage or electronic service.*

This proposed amendment is incredibly, and we submit, deliberately vague, particularly in light of the fact that despite the fact that the legislator has made an effort to define "electronic service", it has made no effort whatsoever to define "postage".

It is notable that Section 341 of the Criminal Procedure Act is similarly vague but Section 54 is a lot clearer since it actually prescribes how personal service of a summons thereunder must be served.

This said, we acknowledge the fact that Section 87 of the National Road Traffic Act does in fact prescribe how service must be effected and reads as follows:

> *Whenever in terms of this Act any notice is authorised or required to be served upon or issued to any person, such notice shall either be served personally upon the person to whom it is addressed or be sent to him or her by registered post to his or her last known address: Provided that the address furnished by the holder of a driving licence at the time of his or her application for such licence or recorded against his or her name in a register of driving licences, or the address recorded against the registration of a vehicle in a register of motor vehicles as the address of the owner of such vehicle, shall serve as his or her domicile of summons and execution for all purposes arising from or for the purposes of this Act, for the service of notices, post or process on that person. (my emphasis)*

It is interesting to note that Section 87 of the National Road Traffic Act, 1996 (Act 93 of 1996) has been routinely ignored by each and every issuing authority in the country which operates in terms of the Criminal Procedure Act since there is not a single one of them that serves notices issued in terms of Section 341 of the Criminal Procedure Act relating to alleged violations of the National Road Traffic Act by "registered post".

Furthermore, as has already been acutely demonstrated, issuing authorities and the Agency alike are fond of applying their own *interpretation* to the meaning of what should be the relatively clear term "registered mail".

All of them have attempted to take full advantage of the fact that nowhere in any legislation is the term "registered mail" and/or "registered post" defined and in so doing, they used a service called "secure mail" to post AARTO documents.

There are numerous reported cases, including but not limited to a Constitutional Court judgment with respect to the service of letters of demand upon debtors in terms of the National Credit Act, 2005 (Act 34 of 2005) however, it would appear that this too has either been ignored or these authorities are unaware of them.

Since this matter is now *sub judice* in light of JPSA bringing an Application before the High Court, we shall not attempt to pre-empt the outcome of that matter by delving too deeply into it here, however we need to point out that the second one disposes of clearly worded provisions, the effect thereof is to open up the floodgates to those who have a propensity to take advantage of vague provisions.

The risk associated therewith is monumental and has already been demonstrated by, the City of Johannesburg and its Johannesburg Metropolitan Police Department (JMPD) who chose to ignore the provisions of Section 30(1) of the current AARTO Act for a period of no less than thirty (30) months, from 1 April 2010 to 22 December 2012, by posting AARTO 03 infringement notices using "ordinary domestic mail".

It is further submitted that the most effective means of service of any document is and remains personal service and despite this fact, the Agency has not served a single courtesy letter or enforcement order in person in the past eight years. Additionally, Regulation 3(1)(b) does not allow for the personal service of an AARTO 03 infringement notice as it clearly should.

In addition, the last time that comprehensive proposed amendments to the AARTO Regulations were published for comment was 64 months ago, in *Government Gazette 34208 of 15 April* ***2011***.

The term "prescribed" means "an action or procedure which should be carried out" and nowhere in the proposed 2011 Regulations amendments was service by email and/or text messaging contemplated.

In effect, the public are being asked to make inputs on the proposed amendments contained in the AARTO Amendment Bill in a complete vacuum and while being completely in the dark as to what these actual prescribed means of service will effectively be.

It is submitted that this behaviour is blatantly deceptive and the Department of Transport should not be seeking to deceive the public and indeed, Parliament itself.

Lastly, and possibly most importantly, the service of documents contemplated in the AARTO Act is arguably the very foundation and most important element in the Act since all of its processes are heavily reliant on it and without proper service being effected, everything falls to pieces.

- It is therefore our recommendation that this proposed amendment be rejected and referred back to the legislator to either formulate a proper provision, simultaneously publishing proposed amendments to the Regulations for comment so sense may be made of the term "as prescribed"; or leave it as is.

Clause 9(b) seeks to amend the current wording of Section 30(2) of the AARTO Act which reads:

> *A document which is sent by registered mail in terms of subsection (1), is regarded to have been served on the infringer on the tenth day after the date which is stamped upon the receipt issued by the post office which accepted the document for registration, unless evidence to the contrary is adduced, which may be in the form of an affidavit.*

to read as follows:

> *A document which is sent in terms of subsection (1), is deemed to have been served on the infringer on the tenth day after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which may be in the form of an affidavit.*

Section 30(2) of the AARTO Act is a presumption of service and in its current implementation, blindly ignores the reality of postal services in South Africa, which are largely regarded as being somewhat *dysfunctional*.

This said, the registered letter service offered by the SA Post Office is by and large, generally efficient and is used by a wide array of entities to serve legal documents by post. The problem with

this presumption insofar as it relates to service by registered letter is that South Africa does not cater universally for street deliveries of post.

A large proportion of registered motor vehicle owners make use of postal boxes located at SAPO and PostNet branches and agencies and, except in the case of large juristic entities, these boxes are not generally checked on a daily basis.

The tight timeframe of ten calendar days represents a week and a half for the SAPO to deliver that document to the closest Post Office to the addressee, notify that person to collect the document in question and for that person to actually collect it.

This is further impacted by the fact that in some cases, due to the locality of post boxes, the owners thereof only check them from time to time and cannot be reasonably expected to do so more frequently.

- ❖ It is therefore our recommendation that the period contemplated for the presumption of service of the document in question by registered letter be extended to a minimum of twenty-one calendar days to cater for the real world in which motorists live.

When contemplating “electronic service” as is referred to in the AARTO Amendment Bill, which we continue to maintain has not been properly contemplated, there should be no need for any presumption whatsoever since the “eRegistered Mail” facility offered by the SAPO provides actual and verifiable electronic means of tracking and status, including but not limited to recordal of the date and time of reading thereof.

- ❖ It is and remains our stance that the sole form of electronic service which should be allowed is that of the SAPO’s “eRegistered Mail” facility, unless the State monopoly of the SAPO is to be ceased and competitive service providers are going to be allowed to provide services.

- ❖ It is further our submission that personal service should play a significantly greater role in the service of AARTO documents and should become the preferred means of service for any and all documents required to be served in terms of the AARTO Act and this will dispose of any need for unreasonable presumptions.

Clause 10 – Section 32 – Apportionment of penalties

We do not have any material comment to make on clauses Sections 32(1) and (2) except insofar as the term “paid over” is used instead of the word “disbursed”.

When it comes to subsection (3) however, we place on record that this proposed amendment has clearly come about as a result of the City of Johannesburg's blatant violation of Section 30(1) and Regulation 3(1)(b) from 1 April 2010 to 22 December 2012.

Nonetheless, it is submitted that the proposed insertion of subsection (3) to read:

> *"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"*

will be totally deficient in addressing this problem.

This proposed insertion completely ignores the fact that the payment points for infringement notices are not limited to those controlled by the Agency.

Issuing authorities, licensing authorities and driving licence testing centres may also receive payments and are generally in the direct control of the issuing authority itself. Once the issuing authority has the money, there is no way that it will let go of it. Issuing authorities also collect "traffic fines" in the prolific roadblocks they conduct where they coerce payment by falsely threatening people with arrest.

History has proven that while the JMPD was not complying with the Act, the Agency was powerless to do anything to them since not only were those infringement notices issued on the JMPD's own in-house system to which the Agency had no access whatsoever, but the banking details of the City of Johannesburg and not the Agency appeared on them and all of the revenue went directly to the City of Johannesburg.

Furthermore, the wording *"until such time that the Act is complied with"* can, and most probably will be interpreted to mean that once an issuing authority resumes compliance with the Act, it will be entitled to rake in all of the monies resulting from payment of infringement notices it unlawfully issued.

This proposed amendment even goes further to introduce the preposterous notion that the Agency should be able to retain 100% of such unlawfully attained monies for itself.

In an ideal world, where authorities act like responsible entities, it should be inconceivable that any authority would even consider violating the provisions of law which apply to them. Unfortunately however, South Africa is far from that ideal world.

Noncompliance with provisions of the law which apply to authorities is also far from the exclusive reserve of the JMPD and it is submitted that very few traffic issuing authorities in South Africa do in fact comply fully with the law and/or give a hoot about doing so. Even the Agency itself doesn't do so.

It is notable that the AARTO Act does not contain any section dealing with "offences and penalties" applicable to contraventions of the AARTO Act itself. It is submitted that this *lacuna* is exactly what has tempted issuing authorities to operate outside of the framework of the AARTO Act.

Whilst the AARTO Act does contain a grand total of three criminal offences which are contemplated in Sections 17, 25 and 27 of the Act, none of these relate to any authority contravening any provision of the AARTO Act.

It is further submitted that this precise *lacuna* which allows all of the authorities contemplated in it to act with impunity, violate the provisions of the Act and generally, make up their own *"laws"* as they go along.

- It is therefore our recommendation that a separate section contemplating offences and penalties should be incorporated into the Act and just so this is clear – we are not talking about the offences and penalties which are contemplated in Schedule 3 which relate only to road traffic offences.
- It is further recommended that the penalty applicable to an issuing authority for contravening the Act should include the suspension and/or cancellation of their authority to be an issuing authority and that the individuals who cause it to violate the provisions of the Act are imprisoned.

Clause 11 – Section 35 – Transitional provisions

Whilst we have no objection the proposed amendment of this particular provision, we do feel it prudent to point out that both, the Cities of Johannesburg and Tshwane have, despite the existence of this provision, resumed issuing Section 341 compounding notices and Section 56 written notices within their jurisdictions, over the past couple of years.

Regardless of the fact that anyone who challenges such a notice will most certainly be successful in having it withdrawn, some people do pay them in ignorance, despite the fact that the issue of these notices is tantamount to fraud. This furthermore goes to strengthen our recommendation above with respect to properly contemplating offences and penalties in the AARTO Act.

Clause 12

As stated previously herein, we do not view it as being essential to anything to rename the Agency.

Similarly, we again state that if the term "National Contraventions Register" is going to be changed, then it should be changed to the "National Road Traffic Contraventions Register" for the reasons articulated in our comments on clause 1(e).

Clause 13

It is our submission that before the AARTO Amendment Bill can become the "Administrative Adjudication of Road Traffic Offences Amendment Act, 2015" or any other name for that matter, the serious flaws within the AARTO Amendment Bill, 2015, as well as the current AARTO Act, 1998 needs to be corrected.

If they are not and the AARTO Act, with its associated points-demerit system gets rolled out nationally, it will constitute little more than a disaster waiting for a place to happen.

Conclusion and recommendations with respect to the AARTO Amendment Bill

It is submitted that on the basis of the unconstitutional provisions currently in existence in the AARTO Act and the fact that the AARTO Amendment Bill does little to address these issues, apart from seeking to repeal the warrant of execution previously contrived to form part of this Act, the current experimental implementation of the AARTO Act should be immediately halted in the Cities of Tshwane and Johannesburg and the entire Act and its Regulations referred back to the legislator to be corrected – or scrapped entirely.

If this does not happen, then it is virtually a given that the AARTO Act will face constitutional challenges and when, not if that happens, this legislation will most certainly be referred back to the legislator for correction.

We urge the Parliamentary Portfolio Committee to intervene now and in so doing, avert the possibility of a further waste of taxpayers' money which will arise from the Department of Transport and its State Owned Corporation currently known as the "Road Traffic Infringement Agency" attempting to defend the indefensible in court.

Justice Project South Africa (NPC)

Submissions relevant to the currently proclaimed AARTO Act and its practical implementation

As averred to in the introduction herein, we do not feel that it would be beneficial to anyone to simply consider the contents of the four pages of amendments contained in the AARTO Amendment Bill, 2015 in a vacuum.

The currently promulgated AARTO Act and its Regulations which are applicable only in the Cities of Tshwane and Johannesburg are extremely relevant, as is its experimental implementation which has been thrust upon motorists residing and/or driving in these two Cities.

Constitutional challenges the AARTO Act faces

It is common cause that the Constitution of the Republic of South Africa, 1996 is the supreme law of the country and each and every other law in South Africa must comply with its provisions. It is therefore irreconcilable that the AARTO Act and road traffic law in general should be regarded to be exceptions thereto.

The presumption of guilt

At the very foundation of the unconstitutionality of the AARTO Act there lies the practical presumption that any and all accused persons are presumed to be guilty until they prove themselves innocent. Albeit that no such stated presumption exists in so many words in the Act, this is unconstitutional presumption evidenced by almost every provision of the AARTO Act.

From the very second an infringement notice is issued, the accused person is put in a position where he or she either has to succeed in adducing evidence in support of his or her innocence, or accept the fact that he or she will summarily be found guilty in absentia and without any trial, enquiry or even a cursory glance being given to any evidence the State should be compelled to present.

The only exception to this rule comes where such an accused person elects to be tried in a criminal Court and in so doing opts-into their inalienable [3]constitutional right to a fair trial.

Upon being served with an infringement notice, if an accused person should fail to exercise any one of the “elective options” availed to him or her in terms of Section the AARTO Act, then further provisions in the Act impose prejudices of escalating severity upon him or her.

[3] Section 35(3) of the Bill of Rights under the Constitution of the Republic of South Africa, 1996 “Every accused person has a right to a fair trial…”

However, it is important to note that regardless of whether he or she is actually served with an infringement notice and courtesy letter, these prejudices will still be imposed unless he or she takes action, even if he or she knows nothing about the existence of these documents.

At no stage of the AARTO process is the Agency or its Registrar required to summon that person to physically appear before a Court or tribunal before moving to the next stage and imposing the requisite prejudices upon him or her. Instead, these prejudices are automatically and/or autocratically applied as is prescribed by the AARTO Act.

At its most draconian level, this can result in the Sheriff pitching up at the accused person's premises and *inter alia*, seizing goods to satisfy the penalty and fees applicable to that infringement notice and all of the other documents which followed it.

Whilst we acknowledge that the warrant of execution is proposed for repeal in the AARTO Amendment Bill, 2015 the fact still remains that it does still exist in the Act.

- ❖ It is submitted that the inbuilt presumption of guilt, which acts as the entire foundation of the AARTO Act is unconstitutional and will fail to pass constitutional muster.

Time limitation to nominate the true driver or person in control

Section 17(1)(f)(iv) of the AARTO Act imposes a time limitation of 32 days from the date of service of an infringement notice upon the owner of a vehicle to nominate the driver or person in control of that vehicle at the time of the alleged infringement if that person was someone other than themselves.

Regardless of the provisions of Section 73 of the National Road Traffic Act which presumes the owner of a vehicle to have been the driver unless evidence to the contrary is adduced, it is ridiculous in the extreme that the AARTO Act holds that any person other than the actual person alleged to have committed an infringement should be deemed to be guilty of it unless he or she nominates the actual person within a given timeframe and in the absence of a trial.

- ❖ It is submitted that this provision is unconstitutional since no person can be convicted for an offence committed by another person who consequently gets off scot free.

The enforcement order

Even if a warrant of execution is not issued by the Registrar, it is a fact that almost 1.3 million enforcement orders have been issued by the Registrar over the past three financial years. It is submitted that had the Registrar complied fully with the provisions of the AARTO Act, this figure would have been closer to 9 million.

According to the 2013/14 annual report of the Agency, 46,267 enforcement orders were issued in the last three months of that financial year (January to March inclusive) where none had reportedly issued been prior to that. In the 2014/15 annual report of the Agency, this figure had climbed by 1,183.23% to 593,713, whilst also indicating that these were issued in the first two and last two months of that financial year (April/May and February/March), a period of just four months.

Change in No. of Enforcement Orders Issued					
Year	JMPD	TMPD	GDoCS	RTMC	Total
2013-2014	16 135	16 691	10 214	3 227	**46 267**
2014-2015	262 689	247 297	60 016	23 711	**593 713**
Change	246 554	230 606	49 802	20 484	**547 446**
% change	**1528.07%**	**1381.62%**	**487.59%**	**634.77%**	**1183.23%**

Source: Page 86 RTIA Annual Report 2014/15

It is our understanding that in the most currently past financial year, this quantum has climbed to a total of 640,169 enforcement orders issued in just five months of the 2015/16 financial year (April to August 2015 inclusive), representing a further increase of 7.82% over the previous financial year. No enforcement orders were issued in the remaining seven months of the financial year.

While we cannot categorically refute the fact that the Registrar *may have* issued *some* enforcement orders as a result of an accused person being in contempt of court after electing to be tried in court and subsequently failing to appear, we can state as a matter of fact that this is never been the case in matters we have had experience with.

Instead, the Registrar typically issues enforcement orders randomly upon *some* of the infringement notices which have progressed to courtesy letters and have not solicited any action from the accused.

The Registrar, empowered by the AARTO Act, gets to do this without so much as summoning the alleged infringer to appear in court to answer for the charge and face his or her accuser in a court, which court appearance would have the effect of establishing the guilt or innocence of that accused person.

- It is submitted that this constitutes a very serious contravention of [4]Section 35(3) of the Bill of Rights in terms of the Constitution which, *inter alia* enshrines the right of every accused person to be presumed innocent until proven guilty by means of a fair trial.

The effect of any enforcement order is to block the issue of a driving licence and/or professional driving permit and/or licence disc on the eNaTIS system but it also has the effect of applying the demerit-points applicable to the original infringement notice against the driving licence of the person against whom the enforcement order is issued, when the points-demerit system is promulgated to be in force.

All of this occurs in the complete absence of any trial and/or enquiry taking place, thereby finding the accused person guilty and imposing sentence upon him or her in absentia.

- It is submitted that the entire process of the Registrar issuing an enforcement order is in clear and flagrant violation of the Constitution and will not pass constitutional muster. At the very least, the guilt of an accused person must be proven before any sentence/sanction is imposed upon them.

Complying with and enforcement order

Section 20 of the AARTO Act holds that an enforcement order may only be complied with by either paying it or successfully having it revoked.

- It is submitted that, given the unconstitutional manner in which an enforcement order is issued, the effect of an enforcement order is to act as a means of extortion of monies since it represents holding a legal gun to that person's head.

Applying for an enforcement order to be revoked

To add insult to injury, the Registrar is then granted the sole discretionary power by the Act to adjudicate over his own decision to issue that enforcement order, since according to Section 20(9)(a) of the Act, an application to revoke an enforcement order must be made to the satisfaction of the Registrar.

In just one instance which we can site wherein eight (8) enforcement orders were issued against a single individual, the net effect of those enforcement orders would have constituted a suspension of his driving licence for a period of eighteen (18) months – for infringements where he was clearly not the responsible person, given the fact that he was successful in nominating the person in control of the vehicle in question on the materially identical facts, but where no enforcement orders

[4] Section 35 of the Bill of Rights in terms of the Constitution – Rights of arrested, detained and accused persons

had been issued upon the remaining fourteen (14) infringement notices. He was however unsuccessful in doing similar on these eight enforcement orders.

This man was effectively forced to pay R8,490 towards infringements he had not committed just so he could have his driving licence renewed, after the Registrar rejected his attempts to have these enforcement orders revoked and prevented him from renewing his driving licence for more than seven months.

- It is submitted that the Registrar can never be regarded to be an independent arbiter over his own decision to issue an enforcement order, which he should never have been allowed to issue in the first place without first establishing the guilt of the person he chooses to sentence.

- It is therefore submitted that this provision will fail to pass constitutional muster.

The "independence" of the Agency

The Agency performs two diametrically opposed functions under the AARTO Act.

On the one hand, it acts as an enforcer and on the other hand it is expected to act as an independent arbitrator outside of the courts to whom accused persons may make representations, etc.

It is a physical impossibility for the Agency and/or any of its employees, including but not limited to so-called "representations officers" to be truly independent and unbiased since its funding and therefore the salaries paid to these people are directly derived from the portion of the penalty amount, coupled with the fees it levies against certain documents.

The "unsuccessful representation fee" of R200 (two hundred Rand) prescribed in Schedule 2 of the AARTO Act is just one of these fees and is currently used to great effect to increase the amount payable by an accused person.

- It is submitted that no Court in South Africa derives its funding from the penalties it imposes upon convicted persons, yet the Agency is almost solely reliant upon funding which does not come from Treasury.

- It is therefore submitted that the entire framework and funding model upon which the Agency is established will not pass constitutional muster.

Tripling financial penalty amounts in order to avoid demerit-points

Regulations 10 and 24 of the AARTO Regulations cater for the avoidance of demerit-points where infringement notices are issued against juristic persons. Instead of compelling the proxy of that juristic entity to nominate the driver so that the applicable demerit-points may be applied against the individual concerned, these Regulations that the points may be avoided entirely by that juristic entity paying the penalty value at three times that amount.

Not only do these provisions go further to prove beyond any reasonable doubt that the AARTO Act is little more than a money-making racket, but it is submitted that they are unconstitutional since they favour employees of businesses, thus creating inequality before the law.

- ❖ It is therefore submitted that Regulations 10 and 24 of the AARTO Regulations will fail to pass constitutional muster.

Limited geographic implementation

Section 36(2) the AARTO Act holds that *"Different dates may be determined under subsection (1) in respect of different provisions of this Act and different areas of the Republic"*.

It is submitted that this is unconstitutional since it creates gross inequality before the law between people who violate road traffic law in the Cities of Tshwane and Johannesburg – and those who do so in any one of the more than 200 other municipal areas in the country.

- ❖ It is therefore submitted that this provision will fail to pass constitutional muster.

Conclusion with respect to constitutional challenges

While the foregoing constitutional challenges relating to the AARTO Act are unlikely to be the only ones it faces, it is submitted that they are amongst the most serious ones.

It is further submitted that enacting unconstitutional provisions appears to be the nasty habit of the Department of Transport, since the National Road Traffic Regulations also contains a glaringly obvious unconstitutional provision.

Regulation 25(7)(f) of the National Road Traffic Regulations, 2000 prescribes that a licensing authority may withhold the issue of a renewed licence disc, even if all outstanding fees and applicable penalties thereon have been paid if a warrant of arrest in respect of an offence in terms of the National Road Traffic Act has been issued [under the Criminal Procedure Act] in respect of the owner of such motor vehicle.

This Regulation blindly ignores the fact that a warrant of arrest in terms of the Criminal Procedure Act is issued as a result an accused person's failure to appear in Court in compliance with a summons issued in terms of Section 54, or a written notice in terms of Section 56 of the Criminal Procedure Act.

The failure of an accused person to appear in Court constitutes contempt of court and nowhere is it held in any law, except the National Road Traffic Regulations that such contempt of court constitutes a trial of that individual having been conducted in his or her absentia..

To the contrary, the purpose of a warrant of arrest is to bring that accused person before the Court through use of reasonable force and/or compulsion by arresting them and bringing them before that Court to answer for the charge of contempt of court as well as the original offence for which they were charged.

The City of Cape Town has, by the admission of Alderman JP Smith when interviewed on "SABC Newsroom" on Thursday 11 August 2016, increased its annual traffic fine revenue by 160% - from R100 million to R260 million in just one year, simply by placing "administrative blocks" on the eNaTIS system and preventing the issue of a licence disc, due to a warrant of arrest existing.

Nonetheless, it is submitted that Regulation 25(7)(f) of the National Road Traffic Regulations, 2000 will, for various reasons, not pass constitutional muster if/when it is challenged. Amongst these reasons are:

- A warrant of arrest is not and can never be interpreted to mean a *de facto* declaration of that person's guilt in relation to the original charge which was brought against him or her;
- Forcing a person to commit another offence – not displaying a valid licence disc – instead of arresting him or her there and then and bringing them before a Court as is prescribed in that warrant of arrest is quite simply ridiculous; and
- This Regulation is in violation of Section 35(3)(e) of the Constitution

The current experimental implementation of the AARTO Act

As you know, most of the provisions of the AARTO Act were proclaimed to be in force in the Cities of Tshwane and Johannesburg with effect from 1 July 2008 and 1 November 2008 respectively.

Since then, the various authorities have used this geographically limited and unconstitutional implementation to conduct what can only be described as a bizarre and grotesque social and legal experiment, albeit that it was initially called a "pilot".

During the eight years it has been in force, the AARTO Act's national rollout and associated points-demerit system has been repeatedly announced in each and every successive financial year since 2010 and in each and every one of those years, it has failed to materialise.

The latest stance of the Department of Transport is that it will be rolled out nationally in this financial year, but that it is awaiting the passing of the AARTO Amendment Bill, 2015 before doing so.

As a result of these anomalies, the current implementation has been used to conduct experiments on motorists, abuse them and generally treat them as the *guinea pigs and lab rats* of the Agency and issuing authorities.

Making up the law as they go along

The authorities involved in this experiment have not limited their experimentation to the implementation of IT infrastructure, etc. but have gone further to make up the law and their own provisions as they go along.

For example, in 2010 the JMPD applied the triple penalty amounts, not only to infringement notices they issued against juristic entities, but also against those who hold foreign driving licenses. Despite the fact that they should never have applied the provisions of Regulations 10 and 24 in the absence of the implementation of the points-demerit system, nowhere in the AARTO Act or Regulations is this provision applicable to foreign driving licence holders.

The JMPD, supported by the Agency has also attempted to deny proxies the right to be tried in court and this led to a company by the name of Fines-4-U taking them to court and gaining judgment against the JMPD compelling them to allow proxies to elect to be tried in court. Nowhere in the AARTO Act is a proxy denied the right to be tried in court, yet both, the JMPD and the Agency saw fit to make up their own provision to deny this right.

The Agency's glaringly obvious contemptuous attitude towards the Constitution and the courts has further been demonstrated by its indescribably arrogant action of taking it upon itself to set a deadline for an accused person to elect to be tried in court.

AARTO OPTIONS

Application	Application Expiry Date
Make representation	2015-05-28
Nominate a driver	2015-04-26
Arrange to pay in instalments	2015-05-28
Opt to court	2015-05-28

Source: infringement notice 0240490030211141 on www.aarto.gov.za upon which an enforcement order was issued.

Nowhere in the AARTO Act does such a deadline exist, yet the Agency, which wields complete control over any and all of the processes defined in the AARTO Act has simply made this provision up.

Another example of the law being made up as the Agency pleases comes in the form of the AARTO 32 form it came up with and began issuing in the absence of any proclamation prescribing its use. If you examine the current AARTO Regulations, nowhere therein will you find any reference to this form.

Whilst we agree that there may be a need for this form in the AARTO schema, the fact still remains that it currently does not exist in the proclaimed Regulations.

The only constant is inconsistency

Throughout the current experimental implementation, the Agency, and more particularly, the so-called "representations" officers it employs have demonstrated a very disturbing trait of providing inconsistent outcomes on things such as representations.

In a high number of cases where representations have been submitted on multiple infringement notices and wherein the facts presented in those representations were in the most part identical, the results thereof have been returned with some of those representations being successful whilst others were unsuccessful. The ratio thereof has generally been in the region of around half being successful while the other half are unsuccessful.

During the course of 2015, appeals thereon which are not contemplated anywhere in the AARTO Act, but were introduced by the current Registrar largely resulted in the remaining 50% of unsuccessful representations being successful, however of late, this has not been the case.

Just how it can be that inconsistent decisions can result out of materially identical arguments in the first place is totally beyond us, however this is most certainly the case with the Agency.

A similar behaviour has been adopted with applications for the revocation of enforcement orders, although recently, some consistency has come about with each and every application therefor being rejected by the Registrar.

As a result of these inconsistent decisions, many people have, after some of their representations were rejected, elected to be tried in court.

On Friday 26 August 2016, I was gobsmacked to hear the Registrar state that such persons are "manipulating the system and electing to be tried in court because they are unhappy with the outcome of their representations". This arrogant statement was made at the Annual General Meeting of the Agency to which I was invited as a "stakeholder observer" and whereat I and other stakeholders were forbidden from uttering a single word and asking as single question.

It is extremely concerning that the Registrar is apparently unaware of the existence of the Constitution, alternatively holds it in the same content he harbours for the courts and is furthermore apparently unperturbed about the inconsistent decisions his employees and he himself makes.

Unfortunately however, it is submitted that this is an inevitable consequence which will arise out of giving one person too much power and setting standards for the appointment of "representations officers" so low as to allow for such things to happen.

The current minimum requirement for being appointed as a "representations officer" is an NQF 6 diploma in law, traffic or police management, or having served as a policeman for 3 years, none of which would qualify such a person to become a Magistrate, yet these people are granted similar powers to Magistrates to affect the lives of people in matters over which they "adjudicate".

It is also notable that in the early days of the AARTO experiment, traffic officers who were delegated as being "prosecutors" in the employ of the JMPD were acting as "representations officers". This was in clear contravention of the provisions contained in *Government Gazette 33038 of 19 March 2010,* prior to which the Minister clearly saw no need to prescribe the determination of qualifications and experience for such persons.

In the *gazette* in question, paragraph 4 clearly states that a representations officer may "not be employed as a magistrate, prosecutor, police officer or by an issuing authority".

To his credit, the Registrar did withdraw those delegations (after initially issuing them) when he realised his *"mistake".*

The original intent of the AARTO Act

It is submitted that as should be quite clear from the preamble and objects of the AARTO Act that at least a significant portion of its purported intention was to improve compliance with road traffic laws, and in so doing, significantly improve road safety by bringing about an environment of accountability on the part of drivers of motor vehicles through introducing a points-demerit system which would see those who chose to continue to be habitual offenders ultimately having their driving licenses suspended and/or cancelled.

It can also be said that the legislators had identified an alleged *over-burdening* of the criminal justice system and the Courts which operate within it as being part of the problem and therefore sought to ease that burden by introducing an administrative justice system.

This also had had the effect of *decriminalising* all but the most serious of road traffic offences so as to remove the devastating and draconian consequences of the imposition of criminal records for each and every road traffic offence, no matter how *minor*, which is prosecuted in a criminal Court. This move can only be viewed as a very good thing, given the fact that the imposition of a criminal record upon any person is no laughing matter and is draconian in the extreme.

In this regard, we refer you to Section 57(6) of the apartheid-era Criminal Procedure Act, 1977 (Act 51 of 1977) which prescribes that the clerk of the court shall record a criminal record against the particulars of any person who pays an admission of guilt fine arising from a summons issued in terms of Section 54 or a written notice in terms of Section 56 thereof with respect to any offence, no matter how *minor*. This draconian provision is also currently being challenged by JPSA and two of its members in the Pretoria High Court under case number 58246/2015.

Another salient feature of the AARTO Act which cannot be overlooked is the fact that it sought to standardise penalties for each infraction nationally, and put in place a strict, time-sensitive regulatory framework within which both, authorities and accused persons would have to exercise their options.

Unfortunately however, what holds true in theory (and intent) often does not translate to practical implementation and often, as has most certainly been the case with the AARTO Act, misapplication of legislative provisions can transform the original intent of legislation into an entirely different "animal".

The commercialisation of road traffic offences

At the very heart of the misapplication of the AARTO Act, and indeed, the enforcement of traffic law in general in South Africa lies the commercialisation of "fines" for road traffic offences and the revenues which can be and are in fact derived therefrom.

Additionally, over a significant period of time, the issuing of "traffic fines", along with the *prosecution* of road traffic offences has transformed from being a mechanism to punish and deter violations of the law into a commercial venture of epic proportion.

Since the early 2000's, scores of private companies have mushroomed out of nowhere to become extremely profitable entities through little more than providing speed cameras to municipalities, issuing fines on their behalf and treating them as *debts*, in direct contravention of criminal law and the Constitution.

Amongst these companies are TMT Services, Syntell, TCS, MVS Phumelelo, TVS, and Belstow Technologies – and these are just the companies who act as *"service providers"* to the Johannesburg Metropolitan Police Department (JMPD). There is also a plethora of others, all of which profit handsomely from the propensity of motorists to disobey the speed limit.

So profitable are these companies that TMT Services (Pty) Ltd has even attracted foreign interest and is now 100% owned by the Austrian [5]Kapsch TrafficCom GmbH. While TMT's involvement in e-tolling may have been one of the areas of interest which attracted Kapsch TrafficCom to it, TMT Services is well documented as being one of the leading players in camera-based *speed "enforcement"* and various abuses surrounding it.

Focus on revenue

So revenue-driven is traffic law enforcement in South Africa that it has recently been revealed that in the 2014/15 financial year, 49% of the [6]Ubuntu Local Municipality's annual overall municipal budget was sourced from traffic fines.

Furthermore, in its [7]answering affidavit on the Application brought by JPSA before the Pretoria High Court, the City of Johannesburg has unashamedly stated that its budget for traffic fine revenue for the current financial year is R400 million and that if it does not receive this money, it will not be in a position to properly deliver basic services. It has furthermore averred that in previous years, it received even more than this and if it doesn't receive such high amounts, it will have to consider raising rates and taxes.

These two municipalities cannot be regarded as the only ones who possess this attitude towards the purpose of traffic law enforcement and it is submitted that almost every municipality in South Africa relies heavily on the revenue streams generated by what they regard as a stealth tax which they have the absolute right to pursue. Even former IPID head, Robert McBride has openly asserted that Metros use their police to drive revenues.

Generally, camera-based "speeding fines" have been transformed into a "pay as you go" system where issuing authorities not only condone, but encourage noncompliance with speed limits, effectively giving motorists "permission" to speed, so long as they pay for the *privilege*.

In this regard, I refer the Committee to the Annual Reports of the Agency which repeatedly demonstrate the almost total focus of the JMPD on issuing AARTO 03 infringement notices, the vast majority of which are for camera-based "speeding" violations.

---

[5] Page 137 – 2015/16 Kapsch TrafficCom annual report.

[6] http://www.timeslive.co.za/thetimes/2015/12/15/Ubuntu-Where-it-is-all-fine-fine-fine

[7] Answering affidavit of the Fourth and Fifth Respondents – Pretoria High Court under case number 30665/2016

In the 2014/15 [8]Annual Report of the Agency, 88.24% of the infringement notices issued by the JMPD were AARTO 03 infringement notices, while a mere 6.64% of infringement notices they issued were AARTO 01 physical citations.

Since AARTO 32 notices (not contemplated in the Act or Regulations) also arise from camera-based speed violations formed a further 5.10% of the notices issued by the JMPD, it is safe to say that 93.34% of the notices issued by the JMPD were for camera-based speed violations and physical law enforcement has been relegated to nothing.

Furthermore, since AARTO 31 notices are separately contemplated and amount to 5.10% of all of the JMPD's notices it issues, it is safe to conclude that all of the 4,655,532 AARTO 03 infringement notices and AARTO 32 notifications of intention to prosecute criminal offences arose from speed cameras yet people are allowed by the JMPD to disregard red traffic signals, drive facing oncoming traffic, use their mobile phones whilst driving and commit a number of other moving violations with impunity.

So long as they do so within the speed limit, drivers in Johannesburg can effectively drive as badly and dangerously as they wish, without the risk of being taken to task and this has further translated to increased crashes.

Getting in on the action

If one takes an even mildly critical look at the AARTO Act, and scratches just slightly below the thinly veneered Utopian and self-defeating alleged intent to improve road safety, it becomes glaringly obvious that central government felt that it had managed to identify an additional revenue stream for Treasury and itself to which they have limited or no access where the Criminal Procedure Act is in force in prosecuting road traffic offences.

This is further evidenced in the AARTO Act by the establishment of the Agency and the apportionment of the penalties payable for each infringement. At all stages of the AARTO process, 50% of the total penalty value is payable to the issuing authority. The remaining 50% (if paid outside of 32 days from service of the infringement notice), plus prescribed fees for courtesy letters and enforcement orders goes directly to the Agency.

Perhaps this goes part of the way to explaining why it is that the Department of Transport and Treasury has failed to fund the Agency properly in the eight years that the AARTO Act has been in force in the Cities of Johannesburg and Tshwane, thus putting it in a position where it has claimed

[8] See page 29 of the RTIA's 2014/15 annual report.

that it has been unable to pay for the postage of courtesy letters and enforcement orders which are required to be served by registered mail or in person.

The fact that Treasury has *benevolently* allowed the Agency to retain surplus funds it has required thus far can only be viewed as being reinvestment while it awaits the big pay-day which is sure to arise from the national rollout of AARTO and the resulting quadrupling of the *cash-cow* pool.

It is sad that central government viewed and/or views traffic fine income as a source of easy money through what can only be described as an elaborate profit-sharing scheme but it is submitted that this is exactly what has happened and is and has been the unstated but clear intent of the legislators who drew up the AARTO Act from the outset.

The alleged "over-burdening" of the Courts

It is also clear that one of the primary stated motivations behind drafting and enacting the AARTO Act was based on the *perception* that the Courts were/are *overburdened* with what are regarded by many as being *petty matters*.

It is indeed a fact that South Africa is crime-ridden and as a result, our criminal Courts have far more serious matters to deal with than motorists who contravene one or more of the plethora of regulatory prescripts of the National Road Traffic Act and its Regulations, or any of the other applicable legislation.

It is however submitted that general criminal Courts are not and never should have been regarded as being the right place for *misdemeanours* committed in terms of road traffic legislation to be adjudicated. Some traffic authorities, recognising that this was the case, have established dedicated Traffic Courts which have been successful – at least in the part – in addressing this issue.

Just in the Gauteng Metropolitan areas of Ekurhuleni, Johannesburg, and Mogale City, **ALL THREE** have established such dedicated Traffic Courts which adjudicate **ONLY** road traffic law matters.

The question must be asked why it is that the funds raised from traffic fines cannot or should not be used to establish dedicated traffic courts in every municipality and thereby deal with road traffic offences properly instead of seeking to dispose of due process by introducing the AARTO Act.

The City of Johannesburg, which is currently the only City where such courts exist but the AARTO Act applies, operates dedicated Traffic Courts in Johannesburg Central, Randburg, Roodepoort, and Soweto.

Since the introduction of the AARTO Act, these Courts have been reduced to virtual wastelands and the prosecutors dedicated to them have sat around twiddling their thumbs – day in and day out since very few serious offences are brought before these Courts and the quantum of alleged infringers who elect to be tried in Court, as opposed to those who are actually summoned to appear in Court don't even come close to one another.

I invite anyone from the Parliamentary Portfolio Committee, the Registrar of the RTIA and anyone from the Department of Transport to accompany me on any day of their choosing so I may take them on a whirlwind tour of the traffic courts in the City of Johannesburg. I would invite them to do similar in Tshwane if a single traffic court existed there, but they don't so it would be a pointless exercise.

While we are at it, we can take a trip to other courts outside of the AARTO implementation where it is not atypical for these courts to commence *business* well after the 08:30 start time which is supposed to be the case, and end business early in the afternoon, with very little business going on in between.

It is therefore submitted that the alleged *overburdening* of the courts is little more than imaginary and/or has arisen from a lack of proper work ethic.

Little of no interest in serious and dangerous road traffic crimes

While it is true that enforcing less serious road traffic infringements can and should have the effect of reducing the propensity of motorists to commit serious road traffic crimes as are defined as offences in Schedule 3 of the AARTO Regulations, this can never be interpreted to mean that serious offences should be practically ignored.

Interestingly, very few of the serious violations of speed limits caught on camera are actually prosecuted and/or have had criminal summonses in terms of Section 54 the Criminal Procedure Act issued and served against the alleged offenders, despite the inexplicable fixation authorities have on speed.

The 2014/15 annual report of the RTIA states on page 72 that: "Over the past years court hearings were held only in the City of Johannesburg (JMPD) jurisdictional area". By extension, this means that from 2010 to 2014, no serious road traffic offences at all were prosecuted by the Tshwane Metropolitan Police Department (TMPD).

Furthermore, the RTIA has demonstrated beyond any reasonable doubt that it has practically no interest in whether the issuing authorities enforce the law with respect to serious road traffic crimes or not.

For reasons best known to the Registrar, in its 2014/15 annual report, the RTIA omitted any reference whatsoever to driving under the influence of alcohol or drugs having a narcotic effect. In its previous annual report (2013/14), the RTIA [9]reported that no convictions at all occurred over a period of two years for any serious road traffic offences other than "exceeding speed limits". Furthermore, the crime of reckless driving does not even feature in any of its reports.

Outcome of Court Cases : Main Charges on which Infringers were Charged				
Infringement Category	2012/2013		2013/2014	
	Guilty	Not Guilty	Guilty	Not Guilty
Vehicle registration & licencing	0	0	0	0
Vehicle number plates	0	0	0	0
Learner & driving licences	0	0	0	0
Professional driving permits	0	0	0	0
Vehicle roadworthiness - general	0	0	0	0
Vehicle - Brakes	0	0	0	0
Vehicle - Lights	0	0	0	0
Vehicle - Steering mechanism	0	0	0	0
Vehicle - Tyres	0	0	0	0
Seatbelts	0	0	0	0
Loads : Passenger tspt vehicles	0	0	0	0
Vehicle overload	0	0	0	0
Passengers on goods vehicles	0	0	0	0
Passenger carrying vehicles	0	0	0	0
Operator fitness	0	0	0	0
Dangerous goods	0	0	0	0
Road signs, signals & markings	0	0	0	0
Exceeding speed limits	970	80	724	11
Rules of the road & driving signals	0	0	0	0
Driving under the influence	0	0	0	0
Other	0	0	0	0
Bylaws	0	0	0	0
Total	**970**	**80**	**724**	**11**

Source: Page 161 of the RTIA's 2013/14 annual report

It's all very well that the AARTO Act seeks to impose demerit-points on the driving licenses of mainly *minor* infringements, but it is prosperous to suggest that this should mean that serious road traffic crimes which are serious contributors to road traffic crashes as well as injuries and fatalities should be ignored. In practice however, this is exactly what is happening.

[9] See page 161 of the RTIA's 2013/14 annual report.

It is additionally notable that the demerit-points applicable to serious road traffic offences in Schedule 3 are in direct conflict with Section 35 of the National Road Traffic Act which prescribes that the driving licence of a convicted person must be suspended for a minimum period of six months on first conviction, five years upon a second conviction and ten years on a third or subsequent conviction; for certain offences.

The unwillingness of authorities to comply with the provisions of the Act which apply to them

During its experimentation phase, almost every prescript of the AARTO Act has been and continues to be violated by the very authorities entrusted with enforcing its provisions, yet all of them expect motorists to comply with the provisions which apply to the motorists they *prosecute*.

This hypocritical "do as I say" attitude has not enamoured the authorities in the eyes of the motoring public. In fact it has had the exact opposite effect and turned a high proportion of motorists into what Mr Chuwe so often accuses motorists of being – "recalcitrant" – or having an obstinately uncooperative attitude towards authority or discipline.

Justice Louis Brandies (U.S. Supreme Court Justice 1856-1941) is famed to have said "Our government is the potent, the omnipresent teacher. … Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law: it invites every man to become a law unto himself, it invites anarchy".

It is against this backdrop that the question must be asked: "If the very authorities entrusted with enforcing the provisions of the AARTO Act see fit to violate and discard the provisions which apply to them, then how exactly can they expect anyone to respect them?"

It is a matter of public and Parliamentary record that, for a period of no less than thirty months, from 1 April 2010 to 22 December 2012, the Johannesburg Metropolitan Police Department (JMPD) blatantly violated Section 30(1) of the AARTO Act and Regulation 3(1)(b) of the AARTO Regulations which prescribes that AARTO 03 infringement notices must be served by registered mail, by posting such notices by ordinary domestic mail.

After failing to get any joy out of our interactions with the JMPD, urging them to comply with the prescripts of the Act from our fist interactions with them in June 2010, when we first became aware of their unlawful actions, JPSA lodged a complaint with Public Protector in June 2011, and after the RTIA and its "Acting Registrar" had also failed to address our complaints.

It is arguable that it was only due to JPSA publicly raising this issue that on 22 December 2012, the JMPD resumed using "secure mail", which JPSA was misled into believing is the same thing as "registered mail", or more particularly, the registered letter service the South African Post Office (SAPO) offers. Their resumption of using what they claim to be "registered mail" came about as a result of a series of *uncomfortable* questions being asked of the Minister of Transport by opposition MPs in Parliament.

In December 2014, the Public Protector finally released her report entitled "a matter of interpretation" wherein she found the City of Johannesburg and JMPD *guilty* of maladministration. The only sanction brought upon these entities was for them to print a *public apology* in newspapers, but she did task the Registrar with the responsibility of actively preventing future abuses by issuing authorities under the AARTO Act.

It has recently come to our attention that "secure mail" is significantly different to the registered letter service offered by the SAPO and it was for this reason that JPSA has sought a declaratory order on the meaning of the term "registered mail" as it is contemplated in the AARTO Act.

It is unfortunate that the need has arisen for us to be forced to approach the Court for clarity on this matter, just like it is *unfortunate* that the various authorities chose to experiment with anything other than the registered letter service of the SAPO in the first place instead of simply complying with the law.

The "impartiality" of the RTIA

The administrative nature of the AARTO Act has established the Road Traffic Infringement Agency as being a multi-functional entity. On the one hand, it is purported to act as the arbiter between alleged infringers and issuing authorities, while on the other, it acts as an issuer and enforcer of the further provisions of the AARTO Act.

These functions are diametrically opposed to one another and therefore cannot even remotely be regarded as establishing the RTIA as an independent arbiter between alleged infringers and issuing authorities and indeed, itself.

If the RTIA was wholly and solely funded by Treasury and did not receive a share of the prescribed penalties, it would have no financial interest in the outcome of the issue of infringement notices and the documents and fees which follow it if such infringement notice is not paid within 32 days and would therefore be in a position to act as an independent arbiter, but the fact of the matter is that it is not.

In fact, only a small proportion of the RTIA's annual revenues are received from Treasury and this "grant" is not even sufficient to pay the RTIA's postal fees, let alone pay for its fancy offices and the salaries of the scores of people it employs.

According to page 171 of the RTIA's 2014/15 annual report, only R15,300,00 was allocated to the RTIA by Treasury in 2015 to fund its operations.

8. Revenue	2015 R	2014 R
Infringement fees	**113 151 208**	**80 768 406**
- Collected Infringements	100 848 117	77 837 499
- Courtesy Fees	7 250 498	1 970 477
- Enforcement Fees	4 728 575	797 223
- Partial Payment Penalty Fees[3]	19 274	47 971
- Unsuccessful Representation Fees	304 744	115 236
Grant received	**15 300 000**	**25 000 000**
- MTEF Allocation	15 300 000	25 000 000
	128 451 208	**105 768 406**

Source: Page 171 of the RTIA's 2014/15 Annual Report

In that same year, its postage costs alone were R25,614,621, which is a far cry from the R40 million per month the City of Johannesburg claims it pays the SAPO every month for the postage of infringement notices but nonetheless makes the Treasury grant it receives fall short by over R10 million on its postage costs alone.

Postage and courier costs	**25 614 621**	**6 155 865**
- South African Post Office and Sky Net[6]	25 614 621	6 155 865

Source: Page 172 of the RTIA's 2014/15 Annual Report

Also in that same year, the RTIA spent almost R44 million on [10]salaries (R43,933,907), which is additionally cited by the Registrar as being its greatest [11]expense the RTIA has.

[10] See page 153 of the RTIA's 2014/15 annual report.

[11] See page 15 of the RTIA's 2014/15 annual report.

Justice Project South Africa (NPC)

One does not have to be a financial guru to figure out that if the RTIA was funded purely by "grants" from Treasury, it would not be able to sustain itself for very long.

Now, given that the RTIA receives **no monies whatsoever** if an infringer pays an infringement notice at the stage where the 50% discount still applies (within 32 days of service thereof), it must therefore follow that the RTIA relies heavily upon non-payment of infringement notices within that 32 day timeframe for its existence.

If every single alleged infringer were to exercise one of the options available to them in terms of Section 17(1)(f) of the AARTO Act within the 32 day timeframe allowed from service, the Agency would not benefit financially from any income, apart from the income derived from those who apply to pay in instalments, coupled with the R200 a shot in fees it applies on unsuccessful representations.

It is reported in the RTIA's 2014/15 annual report that in that year, a total of 71,020 [12]representations were submitted to the RTIA. The table depicting this reported figure therein however contradicts this figure since its total reflects almost double that, which in turn represents 65,942 more representations, totalling 132,962 submitted.

Number of Representations Submitted					
Month	JMPD	TMPD	GDoCS	RTMC	Total
Apr 2014	36 040	708	54	41	**36 843**
May 2014	11 749	1 151	69	39	**13 008**
Jun 2014	5 735	526	44	19	**6 324**
Jul 2014	8 907	873	130	75	**9 985**
Aug 2014	7 869	644	87	48	**8 648**
Sep 2014	8 854	426	50	55	**9 385**
Oct 2014	10 279	521	63	26	**10 889**
Nov 2014	7 733	895	58	6	**8 692**
Dec 2014	4 678	615	63	26	**5 382**
Jan 2015	7 275	806	65	19	**8 165**
Feb 2015	6 892	809	91	16	**7 808**
Mar 2015	6 920	794	83	36	**7 833**
Year Total	**122 931**	**8 768**	**857**	**406**	**132 962**
% of Total	92.46%	6.59%	0.64%	0.31%	100.00%

Source: Page 66 of the Agency's 2014/15 annual report

[12] See page 66 of the RTIA's 2014/15 annual report.

When considering the quantum of representations made to the RTIA, it is vitally important to bear in mind that the fact that only 132,962 representations were made on an overall total of 6,025,562 [13]infringement notices which were issued in that financial year, which in turn represents 2.21% of all infringement notices upon which representations were made and can hardly be viewed as an astounding proportion.

It is submitted that the reported 13.62% [14]decline in representations submitted over the previous year can largely be attributed to a number of factors, including but not limited to the following:

1. That the public has still not been properly educated on the mechanisms of the AARTO Act;
2. That the service of AARTO 03 infringement notices by secure mail as opposed to registered mail has resulted in a high proportion of alleged infringers not even being served with infringement notices and therefore not being aware that they exist;
3. That the behaviour of representations officers employed by the RTIA who routinely make representations unsuccessful and then add the R200 “unsuccessful representation fee” to the combined penalty and fees *payable* on infringement notices which have progressed to courtesy letters has resulted in a loss of faith in their impartiality and an increase in the quantum of alleged infringers electing to be tried in court instead of wasting their time with biased representations officers; and
4. Some alleged infringers have decided to rather do nothing and play a game of “Russian Roulette” with the Registrar of the RTIA who has demonstrated that he only issues enforcement orders against a small proportion of alleged infringers.

Conclusion and recommendations

From the foregoing, it should be more than abundantly clear that the AARTO Act and its experimental implementation have not only proven themselves to be unconstitutional and have made a mockery of the AARTO Act itself, but have further gone to prove that if this legislation gets rolled out nationally, with the points-demerit system in force and its current Captains at the helm, it won’t be long before a national disaster of epic proportion ensues.

As much as JPSA likes the clearly defined timelines and procedures which *should be* followed in the AARTO Act and has actively hailed them in the past, it cannot and will not stand idly by and

[13] See page 29 of the RTIA’s 2014/15 annual report.

[14] See page 67 of the RTIA’s 2014/15 annual report.

watch these provisions be overridden by individuals who choose to exploit the unconstitutional provisions the AARTO Act seeks to impose upon people.

It is submitted that it is not necessary to dispose of the basic principles of law and in so doing, violate the Constitution just because the Department of Transport wants to introduce a points-demerit system.

Introducing a points-demerit system could easily be achieved by simply making regulations under the National Road Traffic Act to facilitate one, standardising penalties, decriminalising infringements and properly defining procedures for prosecution – all in the National Road Traffic Regulations.

Additionally, the Criminal Procedure Act already caters for both written and verbal representations and has done so from the get go. The current National Contraventions Register should also be used to issue and monitor notices in terms of the Criminal Procedure Act so that a proper national picture of so-called law enforcement efforts can be centrally monitored and administered.

The bemoaning of the fact that public prosecutors (under the Criminal Procedure Act) sometimes reduce the penalty amount payable for persons whose financial circumstances make the penalty amount unaffordable to them is not only an exhibition of extreme insensitivity to the financial inequality that exists in South Africa on the part of those persons who sit in their ivory towers and scoff at the world beneath them, but further demonstrates their complete lack of understanding of the word “Justice”. The offering of (quite possibly unlawful) credit terms under the AARTO Act does little or nothing to assist such people either.

The service of documents issued relating to the National Road Traffic Act is already contemplated in Section 87 therein and should be complied with by each and every traffic authority with immediate effect. They should at least try to serve documents properly, before reaching the conclusion that motorists routinely ignore traffic fines.

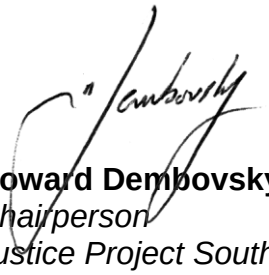
It is furthermore submitted that it is the very authorities who are entrusted with enforcing road traffic laws who have created the problem of noncompliance with the law by failing in their constitutional mandate to properly enforce traffic laws and allowing corruption to run amuck and in so doing, contributed to the lawlessness and carnage which plays itself out on our roads on a daily basis.

Until such time as all of these authorities grow up, get together, and start doing things properly and in the interests of road safety and not their pockets and treating motorists as their cash cows, the

only thing that is going to happen is that the situation will continue to deteriorate and more and more people will die on our roads.

In light of the foregoing and as much as it pains us to have to do so, it is recommended that the AARTO Act in its entirety be referred back to the legislator and its unconstitutional and grotesque experimental implementation be terminated in the Cities of Tshwane and Johannesburg with immediate effect.

Yours sincerely; towards safer roads and Justice for all who use them,



Howard Dembovsky
Chairperson
Justice Project South Africa