

# **Terms of Reference for the Sub-Committee on the Public Protector Report No. 37 of 2018-19 on a systemic investigation into allegations of illegal conversion of goods-carrying Toyota Quantum panel vans into passenger-carrying mini bus taxis to transport members of the public for reward and matters related thereto**

## **1. Introduction**

The Public Protector Report No. 37 of 2018-19 on a systemic investigation into allegations of illegal conversion of goods-carrying Toyota Quantum panel vans into passenger-carrying mini bus taxis to transport members of the public for reward was the outcome of an investigation into the matter by the Public Protector following a complaint lodged on 9 March 2012. The report was referred to the Committee, as well as the Portfolio Committee on Trade and Industry, on 7 May 2019 by the House for consideration and report.

In the report the Public Protector's investigation focussed on the following 3 issues and listed the following findings per issue: —

- Issue 1 - Whether the DoT failed to take effective and efficient action to ensure the safety of commuters travelling in and to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have illegally been converted into minibus taxis.
  - (aa) The allegation that the Department of Transport failed to take effective and efficient steps to ensure the safety of commuters using the Toyota Quantum panel vans that have been illegally converted into minibus taxis for transport and whether it failed to protect taxi owners from the consequences of purchasing Toyota Quantum Panel Vans that have been illegally converted into minibus is substantiated;
  - (bb) The DoT was warned about the practice and the existence of these vehicles in 2009 but failed to timeously ensure that all vehicles that were illegally converted and not brought in to be corrected were impounded and thus taken off the road as envisaged in section 87 of the National Land Transport Act;
  - (cc) Toyota South Africa became aware of the practice as far back as 2005. Other than warning its motor vehicle dealership through written correspondence

and in one particular instance allowing conversions under certain conditions, it does not appear to have taken any severe steps to ensure that its product is not tempered with. This is despite the fact that all parties are in unison that these vehicles are dangerous and many accidents that they were involved in had been fatal;

- (dd) The evidence and information obtained during the investigation demonstrates that, although the DoT took some action, it was ultimately not efficient and effective to ensure the safety of commuters from injuries sustained when these vehicles are involved in motor vehicle accidents and to protect taxi owners from purchasing these vehicles and the effects thereof;
  - (ee) However, the DoT took a progressive step and removed the 1986 illegal converted panel vans off the roads as they were not rectified through the approved retro fitment process. With regard to the illegal converted Toyota Quantum panel vans, the DoT delayed to rectify the matter despite having known about it in 2009. It was only in March 2018 that steps were taken to remove these hazardous vehicles from the South African roads;
  - (ff) It was unlawful for these illegal converted vehicles that were not rectified through the approved retro fitment process to be licensed and be registered in the eNaTiS system as minibus taxis that are used to carry up to sixteen (16) passengers for reward whilst these vehicles are registered and should be licensed as panel vans by DoT;
  - (gg) There are gaps when these illegal converted vehicles are captured in the eNaTiS as the information, ID numbers and VIN-numbers are captured in the Registering Authority and there are chances that fraud could take place where these illegal conversion can be licenced and registered to up to 16 seaters instead of three (3) seaters in the eNaTiS systems;
  - (hh)The DoT conceded that the possibility is that the front-line staff at the licensing offices altered information on the eNaTiS system, thus opening the system to manipulation and fraudulent activities.
- Issue 2 - Whether the NRCS in its official capacity as a National Regulator responsible for the maintenance of compulsory specifications, failed to take effective and efficient steps to ensure that all MIB's comply with the compulsory specifications as envisaged by the NRCS Act so as to restrict the illegal conversions of these vehicles into minibus taxis.

- (aa) The allegation that the NRCS failed to take effective and efficient steps to ensure that all MIBs comply with the compulsory specifications as envisaged by the NRCS Act in order to restrict the illegal conversion of these vehicles into passenger carrying minibus taxis for reward is substantiated;
- (bb) It is the primary role and function of the NRCS to administer and maintain compulsory specifications in the interests of public safety and health as well as promoting the rights and obligations of government to protect the health and safety of the public;
- (cc) In its capacity as the Regulator for compulsory specifications, the NRCS is also responsible amongst others, for the implementation of a regulatory and compliance system for compulsory specifications for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications. The NRCS therefore serves as the inspectorate of MIBs;
- (dd) The NRCS was advised by Toyota SA of the practice of the conversion of Toyota Quantum Panel Vans and the manufacturer's disapproval of the practice. As the national regulator, the NRCS failed to take steps to stop the practice resulting in vehicle accidents which had severe consequences to commuters who were using these vehicles as their daily mode of transport. It is admitted that four hundred and thirty six (436) vehicles were retrofitted to make them safer but the NRCS failed to conduct surveillance to ensure the safety of the public;
- (ee) Therefore, the NRCS failed to ensure that there are no MIBs who are illegally converting these vehicles for use as passenger carrying minibus taxis. This is despite the provisions of section 17 of the NRCS Act which bestows upon the NRCS, powers to inspect, search and seize;
- (ff) The DoT and RTMC established that there are 1986 illegally converted panel vans that did not follow the correct process of retro- fitment through TFM.
- Issue 3 - Whether the SABS conducted adequate quality assurance tests when it was requested to do so by the DoT in 2009 so as to make a determination whether or not the Toyota Quantum Panel Vans that have been illegally converted into mini bus taxis could be retrofitted to ensure the safety of commuters using these vehicles.
  - (aa) The allegation that the SABS failed to conduct adequate quality assurance tests on these vehicles as requested by the DoT in 2009 with a view to making

a determination whether the illegal converted vehicles could be retrofitted so as to ensure safety of the commuters using them is substantiated;

- (bb) The SABS is a national standardisation entity in the Republic that is responsible for the development and maintenance of national standards. They are experts in the field and government and any other applicant relies on the SABS to advise them with regard to the quality of a commodity, product and/or service;
- (cc) The SABS failed to conduct adequate quality assurance tests in respect of the vehicles to ensure that they are safe as commuter vehicles. The tests that were agreed upon between the DoT's technical task team and the SABS were roll over tests, tilt test, the "type 2" brake test and the seat and seat belt anchorage test;
- (dd) The tests were conducted on a static vehicle (stationery) and could not therefore produce conclusive evidence of the state of these vehicles, in particular structural deficiencies which may be caused by among others, cutting of side panels to put in windows and the anchorage of the safety belts on vehicle seats rather than the chassis to ensure that they are not ripped off during motor vehicle accidents;
- (ee) It would have been prudent for the SABS to conduct high speed crash tests on these vehicles so as to induce conclusive reports on how safe would the passengers be when the vehicle has rolled and what happens to the body of the vehicle when it turns on a curve or brakes suddenly and any other tests which they could have considered necessary in the interests of the members of the public who were using these vehicles as a mode of transportation and mostly on a daily basis.

The Public Protector listed the following as remedial actions required or instructions given to the Departments:

- The Minister of Transport to take urgent and appropriate steps to;
  - (aa) Ensure that the DoT has an extensive updated record of a number of vehicles (illegally converted Toyota Panel Vans into passenger carrying mini bus taxis) that have been retrofitted as part of the identified two thousand three hundred and fifty three (2353) vehicles, as well as the status of all others so as

to establish with certainty, the remaining number of vehicles that would still need to be attended to;

- (bb) Reconcile a database of vehicles that were originally admin marked and the current value of those vehicles so as to consider the number of vehicles that will be due for scrapping and such vehicles should with the consent of its owners be duly scrapped and the owners offered scrapping allowances to enable them to acquire roadworthy and authorized vehicles;
  - (cc) Verify operator validity by inspecting Operating Licensing Administration System (OLAS) to determine the number of vehicles attached to Operating Licenses and consider making it a prerequisite that a vehicle should be linked to an operating license for it to qualify for a scrapping allowance;
  - (dd) Facilitate a stakeholder engagement by all relevant parties such as TSM, SANTACO, NTA, NAAMSA, NRCS, SABS, Financial Institutions and Taxi Owner representatives so as to make a determination on details of vehicles that will be eligible for scrapping based on the latest statistics; and
  - (ee) Ensure that there is an investigation conducted into the eNaTiS systems manipulation which resulted in the fraudulent registration of these vehicles with a view to identifying perpetrators of these criminal conduct for arrest and prosecution by the Prosecution Authorities.
- The Director-General of the Department of Transport to take urgent and appropriate steps to:
- (aa) Ensure that the measures taken and agreed to with the Minister are implemented;
  - (bb) Through surveillance and monitoring, ensure that there is no Toyota panel van that has been converted into a mini bus taxi to carry passengers that is on the South African Roads.
- The Minister of Trade and Industry to take urgent and appropriate steps to:
- (aa) Harness and foster good, effective and efficient working relations between the NRCS and the SABS with one being the National Regulator responsible for the maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications and the other being a national standardization institution mandated to maintain national

- standards and ensure quality of commodities, products and services in the interests of the consumers and the people of South Africa;
- (bb) This will ensure that the two entities complement each other in the interests of the members of the public, the people of South Africa and any other applicant who may be in need of their services.
- The Chief Executive Officer of Toyota South Africa to take urgent and appropriate steps to:
  - (aa) To consult with the Minister of Transport with a view to participating in stakeholder engagements aimed at addressing the problem and where possible assist in the identification and removal of these vehicles from the South African roads and cooperate with the DoT in its endeavours.
- The President and Executive Councils of SANTACO, NTA and all other Taxi formations who were affected by the illegal conversions of Toyota Quantum Panel Vans into passenger carrying minibus taxis to take urgent and appropriate steps:
  - (aa) To ensure maximum cooperation with the DoT in its quest to resolve the problem and ensure that all its members cooperate and assist in finding a lasting solution to the problem to minimize further loss of lives.

Departments/institutions/bodies/associations were required to affect remedial action in terms of the report and had been given 30 days from the date of publication of the report (27 March 2019) to submit action plans to implement the remedial action (mid May 2019). This remedial action in turn would have to be implemented within 90 days from the publication of the report (by the second week in August 2019).

The following issues or matters were not disputed:

- During or about the year 2005, Toyota Quantum Panel Vans were converted into minibus-taxis illegally. These vehicles did not comply with the requisite safety standards for passenger carrying vehicles.
- The conversions were in the public domain since 2005 and the DoT attempted to stop the practice in 2009 by appointing a Technical Task Team Committee whose purpose was to investigate the illegal conversions and financing of these vehicles.

- The Task Team also included representatives of financial institutions, the SABS, NRCS and the taxi industry represented by the South African Taxi Association Council. The Task Team was also tasked to investigate whether the said converted panel vans could be made safer, if it was possible.
- The Deputy-Director-General: TRA&II of the DoT submitted a Memorandum to the Minister of Transport on 31 December 2009, recommending that all Toyota Quantum Panel Vans that were converted into minibus taxis should be recalled and that the Department should completely prohibit the conversion of goods carrying vehicles into passenger vehicles. This Memorandum was not approved by the then Director-General.
- The DoT also appointed a Data Gathering Committee and a Law Enforcement Committee relating to the illegally converted panel vans. The Data Gathering Committee established that (in January 2010) 2353 vehicles had been identified as possible illegally converted Toyota Quantum Panel Vans.
- On 5 February 2010, the Acting Director-General of the DoT submitted a Memorandum to the Minister of Transport recommending, on the basis of the work conducted by the Technical Task Team Committee inter alia that:
  - Approval of a process to legalize the illegally converted Toyota Quantum Panel Vans;
  - Approve a media briefing on the process to legalize the illegally converted Toyota Panel Vans;
  - The Memorandum was approved by the former Minister of Transport Hon. Sbu Ndebele, on 11 February 2010.
- DoT officials confirmed that vehicle dealerships and financial institutions do have access to the eNaTiS system to determine whether the vehicle was originally registered as a panel van or passenger carrier type vehicle. The Official also indicated that the DoT or vehicle owner did not require specific buy-in or approval from the original Manufacturer in order to affect a conversion or retrofitting to what can be regarded as a second-hand vehicle, however, the NRTA requires that this can only be done by MIBs and if in line with SABS and NRCS specifications.
- In 2010 there was an undertaking by the Department to assist taxi owners with illegally converted vehicles to retrofit these vehicles in a manner that will ensure they are safety compliant for passenger carriage and/or to comply at least with the taxi recapitalisation requirements which would enable them to be scrapped according to the programme. These operators were given 6 months to come forward, should they not make use of

this window of opportunity they would face a complete impound and/or scrapping of the vehicle which would not assist them in obtaining a scrapping allowance to reduce the financial loss.

- Admin marking appears to have been affected only from 2016 engagements onwards and more specifically in 2018 – admin marking would allow officials to see on the system that the vehicle is an illegally converted vehicle and should therefore be blocked from renewing a licence for such a vehicle.

The Department of Transport (DoT) has implemented a revised Taxi Recapitalisation Programme in order to address the issues raised in the report in as far as it would assist the Taxi industry in recovering some losses where these converted vehicles are not suitable for retro fitment and need to be scrapped.

In a presentation made to the Committee by the DoT on 4 September 2020, the Department indicated that there are still a number of these vehicles on the roads. Reconciliation by the DoT was completed and It was confirmed that a total of 1916 vehicles still qualify for scrapping provided that they are linked to a valid operating licence. However, only 1226 still have operating licences attached to the vehicles. An operating licence is a pre-requisite to qualify for scrapping in terms of the Taxi Recapitalisation Programme. Once approved the vehicle is scrapped with the permission of the operator and a scrapping allowance initially of R124 000.00 was paid - the Scrapping allowance has since increased to R129 700.00. A total of 478 vehicles have been received by the TRSA for scrapping and 382 operators have been paid. The balance is still in the process of being finalised.

In addition to the above, the Committee has received allegations of various other alleged illegally converted vehicles which may be used for purposes of ambulance services as well as transportation of workers. The Sub-Committee is therefore also granted leave to consider and receive presentations on these allegations despite the fact that the Public Protector's Report did not investigate these allegations as a part of the report on illegal conversions of panel vans.

The prime mandate of the Committee is governed by the Constitution of the Republic of South Africa, 1996 ("the Constitution"), in respect of its legislative and oversight responsibilities as public representatives. It is required to consider legislation referred to it and consider all matters



referred to it in terms of the Constitution, the Rules of the National Assembly (NA) or resolutions of the House. It is also required to respond to matters referred to it by Government within its mandate.

In order to thoroughly consider the findings and recommendations made by the Public Protector in the report in addition to the additional allegations of other illegal conversions, as well as assess the progress made by the Department in addressing these recommendations and findings since the report was released or deal with the additional allegations, the committee established the sub-Committee on 6 October 2020 to explore the findings and additional allegations through engaging the relevant stakeholders with the purpose of developing Committee recommendations that seeks to address the entire value chain involved in ensuring safe and reliable transport through ensuring accountability for the actions of the entire value chain including manufacturers, regulators, financial institutions, operators and the Department that registers these vehicles for consideration and reporting by the Portfolio Committee on Transport.

## **2. Public Protector Report Investigation**

The investigation was conducted through correspondence and interviews with the complainant and the relevant stakeholders; meetings with relevant officials from the DoT, SANTACO, Toyota SA, SABS, NRCS, NTA, NAAMSA, Financial institutions such as; ABSA, Nedbank, Standard Bank, Wesbank, SA Taxi Finance and Toyota Financial Services and the RTMC. All relevant documents were analysed and approximately, all relevant laws, and related prescripts applied.

Key laws taken into account to help the PP determine if there had been maladministration by the organs of state who were involved in the matter were principally those imposing administrative standards that should have been upheld by the DoT, the DTI, the SABS, the NRCS, the RTMC and perhaps the Provincial Traffic and Licensing departments in the Republic. Those are the following:

- i. **The National Road Traffic Act, 1996** which provides for road traffic matters which

shall apply uniformly throughout the Republic;

- ii. **The National Road Traffic Regulations, 2000** which provides guidelines for the implementation of the provisions of the National Road Act.
- iii. **The National Land Transport Act, 2009** which furthers the process of transformation and restructuring the national land transport system.
- iv. **The National Regulator for Compulsory Specifications Act, 2008** which provides for the administration and maintenance of the compulsory specifications in the interests of public safety and health as well as promoting the rights and obligations of government to protect the health and safety of the public.
- v. The legislation also seeks to establish a Regulator for compulsory specifications who will be responsible for the administration and maintenance of compulsory specifications and the implementation of a regulatory and compliance system for compulsory specifications for market surveillance by the National Regulator in order to ensure compliance with the compulsory specifications.
- vi. **The Standards Act 24 of 1945, 2008** which seeks to provide for the development, promotion and maintenance of standardisation and quality as well as render conformity assessment services and provide for the continued existence of the SABS as the peak national standardisation entity in the Republic for the development and maintenance of national standards. The SABS is a statutory body that was established in terms of the Standards Act, 1945 (Act No. 24 of 1945) and continues to operate in terms of the Standards Act, 2008 (Act No. 8 of 2008) as the national standardization institution in South Africa which is mandated to develop, promote and maintain South African National Standards as well as promote quality in connection with commodities, products and services.
- vii. **The Road Traffic Management Corporation Act, 1999** which *inter alia* seek to provide in the public interest, facilitation and law enforcement in respect of road traffic

matters by all spheres of government and to promote safety, security, order, discipline and mobility on the South African roads as the public transport and road traffic regulation are of vital importance to the development, safety and quality of life of the citizens of the Republic.

- viii. The Constitution of the Republic of South Africa, 1996;
- ix. The Public Protector Act, 23 of 1994;
- x. Compulsory Specifications for Motor Vehicles of Category M2 and M3 Gazetted in Government Gazette No 33059 of 1 April 2010, and
- xi. South African National Standard - Homologation of vehicle models (SANS 10267:2006).

### **3. Reports and/or Events that occurred prior to the Public Protector Investigation related to this issue**

- (i) Report of the Working Committee of the Standing Committee on Community Safety and the Standing Committee on Finance, Economic Development and 2010 World Cup on the investigation of Toyota Quantum Panel vans into taxis, dated 03 December 2010.
- (ii) Department of Transport Memorandum to Minister: Recalling of converted Toyota Quantum Panel Vans.
- (iii) MINMEC Meeting Progress Report on Illegal Panel Van Conversions.
- (iv) International Vehicle Identification Desk (IVID) Panel Van to Taxi conversion report.

### **4. Other alleged illegal vehicle conversions**

Following the release of the Public Protectors report, various allegations were made in the media that it emerged that 70 new Ford Ranger vehicles had been blocked by a roadworthy testing station in Durban, KwaZulu-Natal, as they had allegedly been converted into passenger-carrying trucks. Further thereto, allegations were also made that Toyota Quantum panel vans were also illegally converted for purposes of being used as ambulances. Concerns were raised that these alleged illegally converted vehicles were being “registered” on the Department of Transport’s eNaTIS/Natis system in what were to appear to be a legitimate “over-the-counter”

process. These contraventions were alleged to have been taking place over a period dating back to 2005.

The same complainant to the Public Protector, Mr Hennie de Beer, revealed to the City Press in February this year that many local ambulances have been converted from three-seater Toyota panel vans and that many of them have already resulted in deaths on South African roads. Toyota South Africa on the other hand denied that its panel vans are dangerous and told the City Press that ambulance conversions were approved by the National Regulator for Compulsory Specifications, adding that this practice was conducted around the world.

These allegations need to be put to the Department of Transport, as well as other possible role players and/or stakeholders, during the course of the work conducted by the sub-committee in order to obtain a report from the Department on this matter and develop recommendations regarding these types of alleged illegal conversions.

## **5. Objectives**

The objectives of the sub-committee on the Public Protector Report on Illegally converted panel vans and other related matters are to:

- consider viable relief measures that the Department could implement in order to assist taxi operators who made bona fide purchases and discovered they purchased illegally converted vehicles;
- unpack policy and legal challenges related to the proposed use of the taxi recapitalisation programme to address illegal vehicle conversions while other vehicle owners who are not public transport operators do not receive any state assistance when their vehicles are found to have been illegally converted;
- invite expert comment on the entire value chain involved in the life cycle of a vehicle from manufacturing or retro fitment to financing to registration by the DoT, as well as how all these aspects are regulated or monitored;
- invite expert comment on how the entire eNaTIS/Natis system works and who all has access to the data on the system and to what extent each user has access, as well as how the system is secured from manipulation or fraudulent data capturing and/or transactions;

- invite comments from stakeholders on the allegations of illegally converted vehicles used to transport paying passengers, patients in converted Ambulances as well as converted vehicles used for the transportation of people while the original design is for transportation of cargo;
- determine from the Department whether it has plans to address these additional allegations or determine what progress it has made to date to identify these vehicles and whether a process is underway to remove these from the roads;
- identify and motivate criteria applicable to improve the manner in which the Department keeps track of all vehicles used in the public transport sphere in order to improve the safety of passengers and road users; and
- make recommendations to the Portfolio Committee on Transport in this regard.

The sub-committee will continue to be active until the finalisation and adoption of the Committee Report on the Public Protector's Report and matters related thereto.

## **6. Areas of work**

The following key areas of work for the sub-committee have been identified:

- Consulting with experts on the manufacturing, financing and registration of vehicles and relevant stakeholders;
- Taking into account the Public Protector Report as well as any other submissions or presentation regarding the additional allegations of illegally converted ambulances and people mover trucks, consider whether the measures implemented and proposed for implementation by the Department are sufficient to prevent future incidents of this nature;
- In respect of the obligations by each stakeholder in the value chain of public transport vehicles as well as ambulances and other people mover trucks, unpack policy and legal challenges that may arise should the measures proposed by the Department be implemented;
- Having considered the relevant policy and legal challenges, identify and motivate criteria applicable to each such vehicle used for public transport, ambulance services or people moving trucks, in the application to register such a vehicle and obligations expected from each of the players within the value chain, including:
  - The target group of vehicle owners;

- The vehicle registration requirements pre-and post-sale;
- The vehicle financing requirements;
- The vehicle modification and manufacturing specification requirements;
- The manner in which the Department seeks to assist taxi operators to limit their loss in scrapping these illegally modified vehicles identified in the report; and
- The manner in which the Department will deal with other vehicle owners who may have illegally converted ambulances or people moving trucks in order to either ensure safe retro-fitment if possible or scrap these vehicles.
- Having identified said criteria, develop reporting timeframes for the Department in which to respond to the recommendations;
- Make recommendations to the Portfolio Committee on Transport in this regard.

The sub-committee would also be responsible for any additional tasks or matters related to consideration of the Public Protector Report as well as other forms of vehicles that may have undergone similar modifications that could leave them unsafe for operation on our national roadways, as assigned to it by the Portfolio Committee on Transport.