

25 March 2019

To: The President of the Republic of South Africa
Private Office of the President
President Cyril Ramaphosa
Email: presidentrsa@presidency.gov.za

CC: The President of the Republic of South Africa
Private Office of the President
Personal Assistant to the President
Malebo Sibiyi
Email: malebo@presidency.gov.za

Dear Sir

**ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL [B38D – 2015]**

1. OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about holding Government accountable in its quest to improve the prosperity of South Africa.
2. OUTA promotes road safety and effective traffic legislation. We believe that to achieve this outcome, South Africa needs effective processes enabled by fair adjudication that complies with the Constitution. In our view, it is critical that South Africa has strict and unchallengeable traffic legislation to ensure behavioural changes in road users which will lead to safer driving and less fatalities on our roads.
3. We are very concerned that our road fatalities continue to remain at very high levels and within the lower international quartile. We believe it is largely due to poor enforcement, a lack of administrative discipline when it comes to traffic infringement management and the variety of problems in the management of vehicle and driver licensing, however having said that, we believe the proposed AARTO amendments will fall far short of rectifying these matters.

INTRODUCTION

4. The Administrative Adjudication of Road Traffic Offences or “AARTO” Act was promulgated in 1998, with four (4) amendments published over the last decade and sought to achieve the following:
 - 4.1. to promote road traffic quality;
 - 4.2. to discourage road traffic contraventions;
 - 4.3. to facilitate the adjudication of road traffic infringements;
 - 4.4. to support the prosecution of offences in terms of the national and provincial laws relating to road traffic and implement a point demerit system;
 - 4.5. to provide for the establishment of an agency to administer the scheme;
 - 4.6. to provide for the establishment of a board to represent the agency.
5. The latest AARTO Amendment Bill or “the Bill” was introduced to Parliament on 1 December 2015 and on 5 March 2019 the Bill was passed by both Houses and sent to the President for assent.
6. During the abovementioned period, OUTA was actively involved in the process. We attended several public hearings (the integrity of which is questionable) and provided written and oral submissions to the National Assembly, to the National Council of Provinces and to the Gauteng Legislature. Throughout our involvement, we highlighted our reservations and raised our concern with certain aspects of the Bill.
7. Furthermore, OUTA even went so far as to hold an AARTO workshop in June 2018, which was attended by several stakeholders in the transport industry including the taxi associations, car rental organisations, business organisations and representatives from the Tshwane and Johannesburg Metro Police Departments. The Road Traffic Infringement Agency or “RTIA” was invited to

participate in this workshop and accepted the invitation but pulled out at the last minute. The aim of the workshop was to identify all the concerns and to understand the impact the amendment to AARTO will have on the administration of AARTO and the motoring public.

8. Honourable President, we decided to write you this letter to ask you to exercise your presidential oversight and to hold off on passing the AARTO Amendment Bill. We hope that you will take note of our concerns. We sincerely believe it is necessary to first address the concerns raised to avoid legal challenges and to prevent Government from suffering another failure to administer the process at the levels of efficiency required. It's one thing to introduce new laws and regulations, but it's another to ensure the effectiveness thereof; to ensure that the intended outcomes are achieved.
9. Our concerns are summarised below for your convenience but attached hereto for your perusal are copies of our full submission to Parliament marked "A", the document compiled after the workshop marked "B", the matter Fines4U (Pty)Ltd and others v RTIA and others 2017 (2) SACR 35 GP or Fines4U case marked "C" and RTMC's report on the State of Road Safety marked "D".

ROAD SAFETY

10. More than a decade, AARTO was implemented in the cities of Tshwane and Johannesburg. Statistics, obtained from the RTMC, show that there has been no decrease in fatalities in these two Metro's and the RTIA failed to show that they succeeded in bringing down fatalities on the roads of Tshwane and Johannesburg.
11. There is nothing substantial in the AARTO Act or the AARTO Amendment Bill that promotes road safety. It is our opinion that AARTO will not assist in the fight against the high death toll on our roads, and that the Act makes provision for the RTIA to sustain themselves financially rather than the promotion of road safety.

ADMINISTRATION MANAGEMENT

12. In the Fines4U case, the judge described the process in the AARTO Act as follows: “Without being disrespectful to the legislature, I take the liberty to observe that AARTO contains the most elaborate scheme of steps to be taken to bring an offender (or "infringer" as described in the Act) who committed a minor traffic infringement or offence to book.”
13. If a motorist doesn't receive an AARTO notice and fails to settle a payment or fine as result, an enforcement order can be issued, and the motorist will be automatically blocked from renewing any motor vehicle licence, driver's licence or permit. AARTO relies on the information in the eNatis system when notifying motorists of any infringements. This is currently a challenge as the e-Natis system experiences a variety of problems including breaches of the system, fraudulent registrations and bad data.
14. With the introduction of the demerit system that will require increased administrative support, the information needed for allocating demerit points will have to be shared between RTIA and e-Natis to ensure correct enforcement of the demerits. OUTA questions RTIA's ability to efficiently and reliably administer the AARTO and the demerit system nationwide.
15. AARTO is also facing similar problems than the e-toll system i.e. high administrative costs and low compliance. The e-toll system was launched on 3 December 2013. (OUTA has been involved with the e-toll system since 2012.) In OUTA's experience, the management of the administration of e-tolls failed and compliance is currently below 30%. A big factor playing a role in this failure is that the fact that the administration management system can't handle the voluminous number of notices and invoices even though e-tolls are only operative in Gauteng, with about 2,5 million motor vehicles using the GFIP roads.

16. With the pilot project of AARTO only in Tshwane and Johannesburg, it is not unreasonable to compare the AARTO system with e-tolls. The payment rate of traffic fines has an extremely low compliance rate (lower than e-tolls), with reported compliance in the City of Johannesburg as low as 4.71% after the piloted AARTO system was implemented in 2008.¹
17. There is no guarantee that compliance will improve on the back of a national rollout. In fact, considering that there are just over 12,4 Million registered vehicles country wide compared to just over 4.7 Million vehicles in Gauteng, the low compliance rate will lead to increased administration costs because more manpower will be required to administer the high volume of notices, customer care and queries.²

SERVICE OF AARTO NOTIFICATIONS

18. In terms of the Amendment Bill, 'electronic service' means service by electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005), and as contemplated in section 19(4) of the Electronic Communication and Transactions Act, 2002 (Act No. 25 of 2002).
19. Section 30 makes provision for the serving of documents by postage or electronic service or personal service. A document served is deemed to be served on an infringer on the tenth day after posting of the document or after the electronic service. The electronic service of the document must reflect in the National Road Traffic Offence Register (NOR).

¹ <https://www.businesslive.co.za/bd/national/2016-11-14-traffic-fines-system-problematic-say-sas-cities/>

² According to RTMC report dated 30 Sept 2018, the total number of registered vehicles in SA was 12,420,372 and in Gauteng 4,788,182. Un-roadworthy and un-licenced vehicles were 1,177,497

20. Not all South Africans have access to electronic devices or postal services to receive such notices. Although the Bill makes provision for personal service, there is no provision that gives the road user a choice of a preferred method of service on him/her.
21. If the Bill provides for a choice, the whole debate over when a notification is successfully served or not, will be over and it will lead to a higher success rate for services of notices.

REVENUE FOR RTIA vs REVENUE FOR ISSUING AUTHORITIES

22. When AARTO is implemented throughout the country, issuing authorities like Municipalities, Metro Councils, the RTMC and others will lose 50% of their income on all traffic fines not paid within 32 days. This will have a huge negative influence on the already cash strapped municipalities and metro councils across the country.
23. Statistics show that the compliance rate in the two metro's where AARTO was implemented 10 years ago, are below 5%. This is mainly because of the RTIA's inability to administer the scheme.
24. If the same compliance rate is achieved throughout the country, municipalities and metro councils will be left with huge shortage in their budgets.

Metro/Municipality	Year of Financial Statements	Revenue -Traffic Fines
Laingsburg	2017	22 196 339
Msduzi	2018	11 826 205
Emfuleni	2017	165 115 436
Johannesburg	2018	211 547 000
Mogale City	2018	20 252 600

25. The RTIA's main objective will be to collect fines issued to road users which is basically the same role as that of ETC (in the e-toll scheme). After five years, ETC failed to collect e-tolls successfully as the compliance rate is less than 30%. In Tshwane and Johannesburg, the RTIA failed to fulfil their mandate. It will be disastrous for the country but especially for local authorities when RTIA is unable to deliver on their mandate countrywide.

CONSTITUTIONALITY OF THE AARTO AMENDMENT BILL AND ADDITIONAL LEGAL CHALLENGES

26. All legislation must be able to withstand public scrutiny before it is tabled and signed into law by the President. All legislation must also be in accordance with Constitutional guidelines and within the ambit of constitutionality.
27. The AARTO Amendment Bill faces the following legal challenges:
- 27.1. The proposed bill does not address the inefficiencies identified in the past ten years.
- 27.2. The Bill, amending the definition of "infringement", include additional Acts i.e SANRAL Act and by implication E-Tolls. Thus, creates another avenue for the collection and prosecution of E-Tolls. In our opinion government is attempting to circumvent the inefficiencies of the SANRAL Act, which include a Constitutional challenge, by amending the current legislation. It is clearly an attempt to generate revenue. The SANRAL Act uses a more stringent process, i.e. a debt collecting/ court process to collect debt, whereas the AARTO Act is of administrative nature which is more stringent on the public/ users. Thus, the burden is shifted from government to the public/ user.

- 27.3. The Bill further amends section 4 and 22 of the Act and effectively decriminalises the process and makes it a civil process. It removes the public/ user's right to be elected to be tried in a court of law. In doing so it takes away a person being accused of a traffic infringement's Constitutional right (section 35 – rights of an accused person). Once caught in the civil administrative system, an infringer does not have the same Constitutional rights as they would be afforded during the criminal process i.e. right to legal representation and a fair trial. In addition, the Bill attempts to increase sanctions without conforming to the normal rules of sentencing. The Bill imposes severe penalties for arguably minor offences without considering the common principles of sentencing (as used during criminal procedures), it does not allow for discretion in the case of lesser offences and make little provision for the *audi alteram partem* rule.
- 27.4. On the face of an infringement notice, the infringer is deemed to be “guilty” and must in fact prove that he is innocent (by lodging representations). Thus, there is a reverse onus on the infringer who is presumed “guilty” until proven innocent. Further, the government has circumvented its duty to prove beyond a reasonable doubt that an infringer is guilty by attempting to keep the matters out of the criminal justice system. The infringer will not have the right to rely on the right to a speedy trial as the process is administrative in nature and the right to a speedy trial is only afforded to accused persons. The result of the latter is that there is a burden placed on the infringer, who has to rely on PAJA which is unnecessarily cumbersome on the infringer.
- 27.5. The Bill grants the sole power to approve remuneration packages, pensions and other benefits of Authority employees to the Board, after consultation with the Minister of Transport, and exclude the Minister of Finance, which creates an oversight shortfall and opens a door for financial irregularities previously covered. The Bill also creates an

oversight short fall by taking the Director General out of the equation and consequently removing a good governance fail safe.

- 27.6. The Bill creates financial gain for government at the expense of the public/ users. The Department of Transport on their own Memorandum explains that they expect an increased revenue and decreased expenses due to electronic service. The amendment further, creates a financial incentive and opens the door for infringement notices to be issued based on financial gain and not merits.
- 27.7. This amendment makes the Authority the judge, jury and executioner of those implicated in traffic infringements.
- 27.8. The Bill, amending section 30 of the Act, creates a “reverse onus” on the infringer to ensure that they receive an infringement notice and removes the duty of the Authority to ensure that a process initiated by them is duly received by the recipient. This in principle goes against the *audi altrem patrem* rule and the general rules of civil procedure. The parties to a civil matter need to follow due process by following the strict rules of personal service unless otherwise permitted by a court of law. These amendments stand to grant the Authority a way to circumvent these rules.
- 27.9. The Bill creates an application concern as 9 people are appointed to adjudicate the whole country’s appeals and reviews and no provision is made for delegation of the Tribunals duties and powers.
- 27.10. Further, the proposed section 29A(8) only allows for the reporting to the Minister but negates any subsequent duty to report to the appointee, who is the President.
- 27.11. The Bill does not allow for condonation or discretion of any form, thereby limiting a lay person’s access to the Tribunal. For example, the Tribunal

may not waive the prescribed fees, forms or condone late filing of an appeal or review.

28. In conclusion we submit that the Bill will not withstand Constitutional scrutiny and should be referred to the legislator.
29. Our country cannot afford lengthy court battles that will ensue if this Bill is signed and promulgated. Our country needs legislation that will really tackle road safety. Our country needs more visible policing to change motorists' unlawful behaviour. Sadly, AARTO is not the solution.
30. Mr President, to promulgate the AARTO Bill as it stands now, will be disastrous for South Africa. The AARTO Amendment Bill is not the answer to the high death toll on our roads and the already cash strapped local authorities. Taking that into account and all the issues regarding constitutionality, we urge you not to sign the AARTO Amendment Bill.
31. We await your response at Your Excellency's earliest convenience.

Yours Sincerely,



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