



## **Road Traffic National Indaba ICC: Durban**

**Date: 6-9 December 2016: ICC Durban**

**The Critical Role played by the NPA to minimise and mitigate the impact of road carnages and fatalities in South Africa**

**Presenter: National Prosecutions Authority**

**Adv. X Khanyile**

### **A. Legislation:**

1. We are all gathered here today because we have a shared responsibility of seeking ways to improve road safety. We cannot achieve this shared responsibility in a culture where there is no trust and we work in silos. Where there is no trust leaders tend to play a blame game instead of finding ways to resolve problems. As leaders are playing the blame game millions of people continue getting seriously injured and dying on our roads.

An example of the blame game can be found in the case of Jack Coetzee and National Commissioner of Police and Minister of Safety and Security <sup>1</sup> where the Tswane Metro Police stopped Mr Coetzee at a road block at 5pm on a Sunday. Mr Coetzee failed to stop and drove through a red traffic light as he allegedly believed the police were not genuine.

---

<sup>1</sup> Coetzee and National Commissioner of Police and Another 2013 ZACC 29 CC

The police pursued him and arrested him, he was detained and refused bail. Mr Coetzee's attorney took the matter to the HC and the court during questioning asked Sup Malema:

Court: Why is he not given bail or pays the fine?

Sup Malema: Confusion is caused by this thing of AARTO.

Court: Can you give a reason why this man is held overnight?

Sup Malema: There is no reason.

At the end of the hearing the court ordered a release with immediate effect and said

“For the public to be forced to pay for the actions of wilful, mala fide and arrogant public officials, which have without hesitation breached the constitution, the fundamental rights of the applicant who have acted in violation of the obligations of the Constitution, is simply not acceptable”

The court emphasised the fact that people will think twice if they knew they would be ordered personally to pay costs flowing from their unlawful actions.

2. The objectives of the AARTO Act 46 of 1998 (“the Act”) is to ease the criminal courts burden on traffic matters by creating the office of the Road Traffic Infringement Agency “(the RTIA)” that is responsible for the effective and expeditious adjudication of traffic infringements.

3. Section 4(h) of the Act states that one of the objectives of the AARTO Act is strengthen co-operation between the prosecuting and law enforcement authorities by establishing a board to govern the agency. One of the functions of the agency is to provide a specialised prosecution support services that will deal with infringers. This needs to be unpacked so that we can have a common understanding of what support services are needed and by when.

4. Further section 4(4) (a) provides that the agency performs its functions by:

*“(a) assisting the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database;*

*(c) providing, at the request of the Office of the DPP, a person to testify as an expert witness in a trial on a charge relating to an offence and*

*(d) providing training, where possible, to authorised officers or the staff of the prosecuting authority”.*

5. Sec 9(4)(a)&(b) of the AARTO Act Regulations states that

*“a prosecutor who declines to prosecute a matter that has been referred to court by means of a summons issued and served in terms of S54 of the CPA or that is classified in terms of Schedule 3 as an offence must notify both the agency and the issuing authority with a properly completed form AARTO 11.*

This section requires a prosecutor to only notify of a decision to decline. It doesn't say the prosecutor must furnish reasons.

6. Currently AARTO has only been piloted in the Gauteng Province and the intention of the RTIA is to roll it out nationally very soon. The gap that we have identified is that there is no one monitoring the cases wherein the infringers have elected to go to court. RTIA keeps records of such cases and is due to meet with the NPA on the monitoring of these cases. Offenders have picked up this gap and are taking advantage of it and the number of court elections is increasing.

7. It is therefore imperative that the NPA and the Traffic Department form a committee that will come up with answers on how to effectively close the gaps in the system.

8. As mentioned, RTIA is also mandated by the Act to provide training to prosecutors from all over the country. It will be ideal that training be given to prosecutors that will be playing a liaison role between the NPA and RTIA and further train other prosecutors. Training of the designated prosecutors could be on-going.

## **B. Real State of Play:**

- (i) SA had more than 10 000 fatal crashes in 2014 and 2015<sup>2</sup>;
- (ii) Most South Africans do not respect the road laws and regulations and do not want to pay fines, e-tags and e-tolls. We even have various entities registered with the sole purpose of ensuring that no one registered with them pays a traffic fine;
- (iii) Notices completed by Traffic Officers are not worthy of court's attention and end up being struck off the roll. Charges are incomplete and are defective;
- (iv) Those that are in order where the offenders fail to go to court the traffic officers fail to execute warrants of arrests. In cases where offenders have gone to court, some traffic officers do not pitch at court and cases are withdrawn;
- (v) Some courts do not have capacity to deal with the high volume of traffic matters brought to their attention in the main this is a result of lack of

---

<sup>2</sup> <http://www.rtmc.co.za>



communication between municipal and provincial traffic law authorities. In one day a prosecutor will receive a thousand in total from both offices;

- (vi) The SAPS and NPA have not sufficiently prioritised traffic offences hence there is no mention of traffic offence in the annual reports of both organisations;
- (vii) Road Safety is not a performance indicator for the police and for the NPA yet there are number of speeding, negligent and reckless driving, culpable homicide and drunken driving cases every day;
- (viii) Drunken driving cases where there is no blood results are often not brought to court for decision, those that are brought to court often don't get enrolled for trial;
- (ix) Delays at the laboratories cause cases to be filed undetected;
- (x) Many offenders ignore AARTO processes and opt to go to court knowing that there are big chances that their cases may not even be heard;
- (xi) Some traffic officers do not come to court to testify especially in cases involving high profile persons;
- (xii) Some prosecutors significantly reduce fines or withdraw cases to the dissatisfaction of the traffic officials;
- (xiii) Stats SA 2015 report on government services mostly targeted for corruption has revealed that South Africans believe that traffic officers are amongst the most corrupt officials that solicit a bribe. Highest being bribe paid to secure a job at 15.5% followed by social grants bribery at 14.2% and bribery to avoid paying a traffic fine at 13.4%. To an extent that you read in the papers that they even give their bank account details to traffic offenders for bribe money to be deposited into the traffic officer's bank account. 19.7% of the respondents said they pay a bribe to avoid paying a fine and 8.4% said they paid for a driver's license;
- (xiv) The Post Office with all respect has its own challenges and has failed to serve a bulk of documents on time resulting in matters thrown out of court\ representations being successful. This impacts every agency\entity in the value chain;
- (xv) We work in silos even though we have a common responsibility to make our roads safe and reduce the number of fatalities on our roads.

### **C: Good practices\Initiatives\ Role played by the NPA**

- (i) In terms of the legislation we grant authorisation from time to time to Traffic authorities to conduct speed law enforcement by camera;
- (ii) We have granted permission to authorities to conduct speed law enforcement using a method known as Moving Violation Recording (MVR) for high speeds on freeways where unmarked cars of traffic authorities tail vehicles travelling at high speeds. It is imperative that the traffic officers make available to the court the video recordings of the alleged

transgression. In the recordings that are available to the courts, the quality of the recording is often of poor quality and the wrong modes are used;

- (iii) We have regular meetings with the Traffic Department and we participate in a multi-stakeholder forum known as the Technical Committee on Standards and Procedures. We are also represented in the National Road Safety Steering Committee of the DOT;
- (iv) Teamwork spirit when dealing with Dräger challenges. Currently we are together piloting the use of Dräger to electronically test breath alcohol in the Western Cape;
- (v) Together with the DOT we are looking at the possibility of establishing roadside courts to combat speeding and other traffic offences on national roads;
- (vi) The screening by prosecutors of traffic dockets that have been closed and those that were not submitted for decision. This goes a long way in sending a good message to families of those who suffered trauma as a result of negligence, drunk and driving and speed offences. Just last week for 3 days the Free State screening team screened about 1600 drunken driving related dockets from various police stations awaiting blood results. The purpose was to see what cases can be enrolled without blood results based on available evidence. From 1000 case dockets that they had read by Friday only 120 dockets are to be placed back on the court roll for trial;
- (vii) Asset Forfeiture Unit forfeiting vehicles to the state that were used for excessive drunken driving and excessive speeding. At first the test case *NDPP v Van Staden* was successful in showing that the POCA could be applied in individual cases of wrongdoing and the court supported that the vehicle is an instrumentality of excessive drunken driving<sup>3</sup>. Subsequent to that the cases were heavily litigated resulting in the court having a concern that we are using a sledge hammer to swat a gnat. In the *Mohunram*<sup>4</sup> judgement the court leaned towards viewing POCA as more organised crime focussed and those government departments who are responsible for certain functions should fulfil their mandate and not rely on POCA or the NPA to do so. In this case the AFU had forfeited the house that was used partly as an illegal casino and the SCA stated “the Gambling Act had not provided for the criminalisation of the possession or the use of gambling machines”.

It became clear that there was a need to amend the Road Traffic Act to make provision for the forfeiture to the state of vehicles that have been used in the commission of a category of offences. Even in successful cases the courts emphasised that:

- There must be a reasonable direct link between crime and property;

---

<sup>3</sup> *NDPP v Van Staden* (2006) SCA 135 RSA

<sup>4</sup> *NDPP and Mohunram* (2006) SCA 11RSA

- Employment of property must not be functional to the commission of the offence;
- Property must facilitate the commission of the offence;
- Property must be functional and not merely incidental to the commission of the offence;
- Should not be the venue: there must be a functional relationship;
- Property must play an indispensable role to the commission of the offence.

Issues of right to property, double jeopardy, proportionality (“does the means justify the end”) and rationality also came to play.

- (viii) Charging reckless drivers for murder in deserving cases. We saw this in the Jub Jub case and the Humphrey<sup>5</sup>s case. In the Humphrey’s case that went up to the SCA where there was a collision between a train and a minibus, 10 passengers died, 4 were seriously injured and the court held that negligence has been established but not *dolus eventualis*. As a result murder was replaced with culpable homicide and the convictions on attempted murder were set aside;
- (ix) Heavy sentences are imposed by the courts in corruption cases involving traffic officers;
- (x) There are pockets of excellence in some areas where a case docket of a collision involving serious injury or death are brought to the traffic prosecutor within 3 days to commence with a prosecutor guided investigation;
- (xi) In the Western Cape the provincial traffic work 24/7 and the alcohol centre where breath testing is being conducted is always on duty;
- (xii) NPA in the Western Cape was instrumental in the establishment of a partnership between SABMiller and NICRO to increase the capacity of NICRO’ panel programme for convicted DUI offenders and accused whose cases have been diverted. In some cases NICRO does not merely stop after the community service has been completed, but work for as long as 3 years with an offender and his family to change behaviour and educate.

## **D: Proposed solutions**

- (i) Improved communication between the Department of Traffic and the NPA. Establish a national team that will look into closing the gaps and get rid of corruption ;
- (ii) Structured and ongoing training of traffic officers, SAPS members and prosecutors on traffic matters;
- (iii) Have more traffic courts and dedicated traffic prosecutors especially in areas that in the proximity of national roads where high volume of traffic is experienced. A decision can be taken at a high level on how to fund the courts;

---

<sup>5</sup> *Humphrey v State* 424\12 2013ZASCA20



- (iv) RTIA to give prosecutorial support so that the DOT can be in the loop on the status of their cases;
- (v) Establish a committee that will be fully representative of the relevant traffic agencies, SAPS and the NPA to focus on closing the gaps and looking at creating a database;
- (vi) Value interdependency and adopt a more cooperative and coordinated approach;
- (vii) Map the network of actors and develop a reliable data that can be accessible to all actors;
- (viii) Strengthen multi-agency decision making. A decision that one agency takes if not properly communicated, at an early stage with other actors, might destroy the trust;
- (ix) Invest on having reputable individuals as ambassadors\advocates of road safety;
- (x) Consider involving the judiciary on the subject to enable road safety to be a standing item on the agenda of the LEEC, DEEC and PEEC meeting;  
Get rid of corruption by being proactive and use more entrapments;
- (xi) Public education that will make people demand safety on roads the same way that they demand safety in their homes and streets;
- (xii) Beef up capacity of the tracing unit that executes warrants of arrests;
- (xiii) Speed law enforcement should focus on prevention and changing drivers behaviour;

**Bo Bennet once said**

**“Without initiatives, leaders are simply workers in leadership positions”**