

## **EXECUTIVE SUMMARY**

### **1. PART 1: TRAFFIC OFFENCES MAGNIFIED**

#### **1.1 SETTING THE SCENE**

In 1994 the Ministry of Works, Transport and Communication, in its White Paper on Transport Policy, paved the way for an investigation into a system that would result in a more effective means of adjudicating road traffic offences. The above White Paper concluded that the current ineffectiveness of the system has a highly detrimental effect on road safety and is primarily due to the fact that traffic offences are considered as petty offences by both the courts and the transgressors. As a result the transgressors are not paying fines and the adjudication of these types of offences is not enjoying preference. Furthermore, the disregard of the criminal legal process by the transgressors of minor traffic offences could result in a criminal record. The White Paper proposed that minor offences should be subject to administrative adjudication and the immediate imposition of fines.

The problems experienced in Namibia are not unique. Several countries, which experienced the same problems, removed some of the administration of road traffic offences from their criminal judicature to alleviate the burden on said judicature and to enable the efficient prosecution of road traffic offences.

This Issues Paper follows from the recommendations of the White Paper on Transport Policy and it investigates the current road traffic and transport environment with specific reference to its applicable legislation, fiscal framework and prosecution process and the application thereof at the coalface. It also investigates the alternative systems implemented in various parts of the world.

#### **1.2 ROAD TRAFFIC LAW CAPTURED**

Road traffic law does not exist in a void. It is not created or developed, enforced or prosecuted as a single isolated or detached element. As a result, a holistic understanding of law as a conceptual structure is needed to determine the existence, or lack of, symmetry between the various pillars of road traffic law. A holistic understanding of the law does not imply an in-depth understanding, it merely requires knowledge of the distinction between substantive law and adjectival law and the classification of the law.

In the road traffic environment, the difference between substantive law and adjectival law can best be elucidated by example. The Road Traffic and Transport Act, 1999, is substantive law (it determines the behaviours that are not acceptable) while the Criminal Procedure Act, 1977, is the adjectival law (it provides for the enforcement procedures of those behaviours).

With regard to the classification of the law, road traffic law is that part of the public law within national law. As part of public law, the road traffic law functions in the habitat created by it and is partner to a dynamic relationship between the road traffic law, the Constitution and the criminal law. The applicable principles of the Constitution and the criminal law must be considered when developing any system of adjudication of offences.

### **1.3 ROAD TRAFFIC LAW IN PARTNERSHIP WITH THE CRIMINAL LAW AND THE CONSTITUTION**

#### **1.3.1 THE FUNDAMENTAL PRINCIPLES OF THE CRIMINAL LAW AND THE CONSTITUTION**

As stated above, the road traffic law does not exist in a void. Government policy, international conventions on traffic, regional protocols on traffic and transport and various suites of legislation influence road traffic law. The Constitution and the CPA, however, have the most profound impact. Both last-mentioned Acts of the National Assembly contain fundamental principles for the protection of the citizens of Namibia against unreasonable or cruel state intervention. It is within the enabling framework of these suites of legislation that the development of a different system for the adjudication of traffic offences will have to take place.

A fundamental principle of the criminal law is the right of the accused to a fair trial. This right implies that the liability of the accused may only be determined –

- In a court of law
- By an independent and objective presiding legal officer
- After the prosecutor has brought a formal accusation
- After the accused was afforded an opportunity to rebut the accusation
- In the presence of the accused (unless exceptional circumstances prevail)

The above fundamental principle is enshrined in the Constitution. Article 12 of the Constitution entrenches a person's right to a fair and public hearing. It would appear as if any interpretation of the Constitution results in a conclusion that a system of adjudication of road traffic offences must, at a minimum, be conducted by public hearing. An accused's right to a fair and public trial is the foundation of an efficient traffic adjudication system.

#### **1.3.2 THE CURRENT LEGAL PROCESS**

The relationship between the procedural and adjectival law creates the environment for road traffic offences. The Road Traffic and Transport Act, 1999, creates the offences and the Criminal Procedure Act, 1977, lays down the procedures whereby either the offence is condoned by the law in exchange for money or the presence of the offender is obtained in court.

An offender, after having committed a road traffic offence, may be confronted with two different types of notices (generally known as a fine). Depending on the type of offence, a traffic law enforcement officer issues a notice, either in terms of section 341 or in terms of section 56 of the Criminal Procedure Act, 1977.

A section 341 notice may only be issued for certain types of offences (for example, speeding and unauthorised parking). The offender is granted an opportunity to pay a certain amount in exchange for the law to disregard the offence. If the offender pays the amount required he/she is not prosecuted and does not incur a criminal record. Should the offender not pay that amount as required by that notice, other provisions of the Criminal Procedure Act, 1977, are activated to ensure that the offender is duly

punished. (This type of notice is a deviation from the fundamental principles of the criminal law, which is entrenched in the Constitution).

There are other types of traffic offences that require a notice, different to the notice in terms of section 341. This notice, issued in terms of section 56 of the Criminal Procedure Act, has as its purpose a directive to the offender to appear in court. The offender does, however, have an option to pay a certain amount as an admission of guilt without having to appear in court. (An admission of guilt fine is, as is the case with a section 341 notice, a deviation from the fundamental principles of the criminal law, which is entrenched in the Constitution). Should the offender not pay the admission of guilt as required by that notice and fail to appear in court, other provisions of the Criminal Procedure Act, 1977, are activated to ensure that the offender is duly punished.

Once an offender has failed to heed the opportunity provided by or the directive of the section 341 or section 56 notices respectively, the court will issue a summons in terms of section 54 for the offender to appear in court. Again the offender is granted an opportunity to pay an admission of guilt fine before appearing in court. However, should the offender not pay that admission of guilt or not appear in court, the offender is guilty of an offence and liable to a further fine. The court may also issue a warrant of arrest under these circumstances. The Prosecutor-General may further decide that an offender must stand trial or be sentenced by a Higher Court, in which case an indictment is issued in terms of section 141 of the Criminal Procedure Act.

The principles contained in the Constitution and the Criminal Procedure Act, 1977, as discussed above, are applied, in the case of road traffic laws, by the Ministry of Works, Transport and Communication, the Namibian Police, municipal traffic officers, road transport inspectors and the lower courts. The following chapter represents the findings of an investigation into their manner of operation, level of co-ordination and level of success.

## **2. PART 2 : A PRACTICAL REVIEW OF THE ADJUDICATION OF ROAD TRAFFIC OFFENCES**

### **2.1 THE APPROACH**

After determining the theoretical legislative environment within which road traffic offences should be adjudicated as discussed in Part 1, it was necessary to determine how efficient these principles and procedures are when applied in practice. As a result two investigations were launched, one into the flow of fines generated by the traffic offences and one into Magistrate's Court process.

The purpose of these studies was ultimately to determine the following:

- Whether fines generated in terms of road traffic legislation were exclusively utilised for the purpose of road traffic enforcement and prosecution and channelled accordingly;
- What the level of success of the enforcement and prosecution of road traffic offences is;

The flow of traffic fines could be established, although the information obtained is deficient in certain regards. With regard to the court process, however, due to the fact that the courts do not have a computerised management system, no reliable information could be obtained. As a result our findings in this Part are based partly on the statistics obtained from the Windhoek Municipality, Nampol and the Windhoek Magistrate's Court and partly on the perceptions of the prosecutors and law enforcement officers as well as our own experience.

## **2.2 FINES**

The Namibian Police, various municipal traffic officers and road transport inspectors issue written notices as authorised under the Criminal Procedure Act, 1977. Fines are paid at the Magistrate's Court or at a Police Office within the jurisdiction where the offence is committed. If a fine is paid at a Police Office such money is paid over at the end of each day to the Magistrate's Court within that jurisdiction. At the end of each day, the various Magistrates Courts pay the fine money received by them over to the General Revenue Account. At the end of each day, monies in the General Revenue Account are paid over to the State Revenue Account, which is the final destination of monies. No fines are paid into the General Revenue Account for that month. Included in this account is an item called "fines and forfeitures". This amount is not limited to traffic fines, but includes all fines paid at a Magistrate's Court (ie contempt of court fines, bail money forfeitures, fines under other legislation, etc). No separate accounts/records are kept by the Magistrates Courts of traffic fines received and these statistics are thus not available.

To date, all monies collected for traffic offences are eventually paid over to the State Revenue Fund. In this account it amalgamates with all money collected by the State. No specific allocations are made from this money. It forms part of the pool of State money.

An attempt was made to determine the total amount of fines received by the State for traffic offences. Not all institutions involved keep separate records of such fine money and therefore no final figures can be provided.

The statistics kept by the Namibian Police and the Windhoek Municipality on admission of guilt fines and section 341 payments were obtained. From these statistics the following crystallised: for the year 2000, 55% of the admission of guilt fines issued by the Namibian Police are successfully collected. The average success rate of the Windhoek Municipality is 40.6% for the year 2000. Furthermore 20% of the notices are withdrawn and 2,4% of the notices are untraceable.

Specific statistics regarding the reasons for and percentages of unsuccessful collections do not exist. The reasons for unsuccessful collections vary (eg failure to pay by offender, inability to find offender due to incorrect addresses, etc, mistakes appearing on AOG (minimal), withdrawal by court, etc).

It was difficult to obtain figures from the Magistrate's Court in Windhoek, as they do not keep computerised records and the figures had to be traced from the court registers kept.

Although there are certain misgivings about the validity of the information obtained from the Court, the available figures show a payment rate of 67,2%, which is above average.

### **2.3 THE MAGISTRATE'S COURT PROCESS**

The filed study concentrated on the magisterial districts of Windhoek, Oshakati and Karasburg. The districts chosen represent a cross section of the types of authorities in the country, ie a developed city, a developing city and a rural town near the border.

In Karasburg, a large percentage of the cases withdrawn are prosecutions against foreigners. Foreigners tend not to respond to notices issued to them in terms of section 56 of the CPA and summonses or warrants of arrest cannot be served on them in a foreign country, as Namibia has not concluded any co-operation or extradition agreements with neighbouring countries in this regard.

In Oshakati, out of a total of 3022 warrants for arrest issued by the Court, only 13 were served, due to incomplete addresses and the remoteness of the area.

With regard to the serving of warrants of arrest, Karasburg was found to authorise the warrants, but to leave them blank. They were then kept for a period of 30 days by Nampol officers, after which they were returned to court and cancelled. This occurred during the period 19 June 2000 to 28 July 2000.

Interviews with law enforcement officers and prosecutors indicated that they are experiencing problems with the current adjudication system but these pointed more towards a lack of a coherent approach towards traffic law enforcement and prosecution than to a problem in the law.

We noted throughout that no authority mentioned a strategic management plan with regard to the law enforcement effort. Law enforcement seems not to be consciously related to the reduction of road deaths or the protection of infrastructure. The law enforcement officials do realise the purpose of the exercise, but their programmes are not extended to the Courts, resulting in the Courts not realising the importance thereof. From the interviews with the law enforcement officers the strengths and weaknesses of the current adjudication system were identified.

### **2.4 STRENGTHS AND WEAKNESSES OF THE CURRENT ADJUDICATION SYSTEM**

The following strengths were identified:

- The relationship between the traffic law enforcement authorities and the courts is generally healthy;
- Very few cases are withdrawn once they reach the courts.

The following weaknesses were identified in relation to the current system of adjudication:

- Warrants of arrest are not executed to an acceptable level;

- Foreign offenders cannot be prosecuted successfully;
- The level of payment of section 341 notices is too low;
- Available statistics are insufficient to base any management decisions on;
- Prosecution of traffic offences bears no relation to road safety goals based on accident statistics.

## **2.5 GENERAL OBSERVATIONS ON THE NAMIBIAN SYSTEM**

While the institutions involved in the adjudication of road traffic offences are committed to achieve success, there is no coherence in the process. The level of success achieved by the institutions under these circumstances is exemplary.

Measured against international standards, though, Namibia lags behind with regard to best practices, resulting in our relatively low success levels for payment of fines and the reduction in offences leading to the reduction of road deaths and serious injury, being unacceptably low.

The purpose of creating a road traffic offence is to ensure the safety of road users and the protection of infrastructure through reducing road deaths, injury and unnecessary costs (maintenance or capital) in relation to infrastructure. To achieve the purpose of creating order in the road transport environment, the efforts of the various institutions involved must be synthesised. This is not currently the case in Namibia – not as a result of a lack of commitment or knowledge, but rather as a result of a lack of co-ordinated management of the law enforcement and offence adjudication process.

## **3. PART 3 : INTERNATIONAL COMPARATIVE LEGAL STUDY**

### **3.1 INTRODUCTION**

In evaluating the current Namibian adjudication system, a comparative study of similar systems and solutions from elsewhere in the world was undertaken. For the purpose of this study, it was decided to investigate the administrative adjudication of road traffic offences in Singapore, New Zealand and South Africa. Namibia shares a legal history with these countries in that the administrative and road traffic laws in all four countries are based on the British system. In the three countries studied, road traffic offences are adjudicated in accordance with an administrative system additional to the criminal adjudication system. The Singapore system seems to be extremely effective, but has to be seen in context with other government policies, such as zero tolerance approach towards all crime and the attitude of the citizens towards the law. The New Zealand system, on the other hand, seems to be effective, but with room for improvement. The total compliance rate eg for the payment of traffic fines is not measurably higher than the current rate of Namibia, while the cost of the administration of the system is substantially higher.

### **3.2 SOUTH AFRICA**

In 1991, the South African Government adopted the Decriminalisation Act, 1991 (Act No 107 of 1991). In terms of this Act, any criminal offence that is, after investigation by a committee established in terms of the Act, considered not to justify criminal

prosecution, may be decriminalized. This entails the removal of the offence from the ambit of the criminal judicature and the adjudication thereof in terms of an administrative adjudication system as prescribed by that Act. Despite the adoption of that Act, very few criminal offences have been decriminalised in terms thereof. The National Department of Transport of South Africa has, however, adopted the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No 46 of 1998) (AARTO Act). This particular Act creates an agency that is responsible to administer the Act and to adjudicate infringements that, through the functioning of the AARTO Act, fall within its ambit.

Various role players contribute to the AARTO system. These include law enforcers, administrative personnel at issuing authorities, members of the Road Traffic Infringement Agency, members of the South African Post Office and banks, state prosecutors and members of registering authorities and driving licence testing centres. Members of the motoring public also contribute, through their voluntary compliance to the conditions of the AARTO Act, to the AARTO system.

The AARTO process starts with an alleged traffic infringement and the issuing of an infringement notice. This notice can be issued either by hand or by registered mail. Each type of infringement has a fixed penalty depending on the severity thereof. These penalties take the form of monetary penalties, but most infringements also incur a prescribed number of demerit points. The demerit point system (PDS) or penalty point system enables the identification of habitual offenders and the suspension of their licences. Therefore, it serves as a deterrent to unsafe traffic behaviour. The fact that the demerit points for each infringement are fixed, also reduces the possibility of corruption.

How road users choose to react to infringement notices determines to a large extent their involvement in the AARTO process. They have various options to choose from, including an initial choice to follow the court process, the making of representations, the nomination of another person or driver in control or the election to appear in court. However, a hallmark of the AARTO system is the fact that infringers are compelled to react to infringement notices within the first 28 days after receipt of such notice. If they neglect to react to notices, the AARTO process is activated, with a whole variety of financial and judicial consequences. Should the infringer neglect to respond to the options provided by the AARTO system default procedures are automatically activated to ensure compliance.

Infringers who have failed to respond to any of the documentation sent to them are served with a warrant of execution. Once a warrant has been served on an infringer by a sheriff, the infringer has seven days within which to respond to the warrant. The amount payable at this stage includes the prescribed fees added with each step of the process.

If the infringer fails to respond to the warrant, the sheriff executes the warrant by:

- Seizing and selling movable property to defray the penalty and fees due;
- Seizing the infringer's driving licence or PrDP;
- Seizing or defacing the licence disc and operator card (if applicable) or
- Immobilising the motor vehicle involved.

The infringement and penalties due have already been recorded on the NaTIS and if the warrant cannot be served, the amount due for the warrant of execution is also added to the licence renewal notice of any vehicle owned by the infringer or the reissuing fee for the infringer's driving licence or PrDP.

### **3.3 NEW ZEALAND**

The Police in conjunction with the Department for Courts (Justice) execute the New Zealand system of adjudication of road traffic offences. The system is essentially not decriminalized, but the procedure is to a great extent an administrative procedure. The offender is, as is the case in South Africa, given a choice to defend him/herself in Court. The legislation, however, makes the granting of a hearing very difficult for the defendant. The defendant, on receiving an infringement notice, may write to the issuing authority (the Police in New Zealand) stating his/her defence and asking for a hearing. The Police, as a first "stop" adjudicate the request and will either file the hearing in Court or remove the infringement. This adjudication is done in accordance with well-developed principles contained in a guideline document that is made available to the officers concerned.

Infringement (minor) offences do not require court proceedings or result in a criminal record. However, if the defendant does not avail him/herself of the opportunity to pay the infringement fee, the infringement procedure is converted to a court procedure. Once it is converted to a court procedure and becomes a court fine, the offender does not have a hearing in court. The court merely notifies the offender of his/her failure to pay the infringement fee and gives a date for payment of the court fine. If the offender remains in default the court is entitled to take enforcement measures. These include imprisonment, periodic detention, community service, seizure of property, deduction notice to bank or a salary attachment.

Only a limited range of driver behaviour offences attract demerit points. The demerit points system was initially seen by the New Zealand government as a means to identify drivers that need retraining. Very early on, however, it became a means of punishment. A 100 demerit points accumulated over a period of 2 years leads to a 3 months suspension of a driving licence. The demerit points system runs concurrently with the fines system.

The New Zealand system also makes provision for a mandatory 28-day suspension of a driving licence. If an offender is caught committing a serious driving offence the Police can suspend his/her licence, effective immediately, for 28 days. This is called roadside licence suspension, but it can happen anywhere – at the roadside, at a Police station or wherever the Police find the offender after they receive confirmation that his/her alcohol level was double the legal limit. Roadside licence suspension is an instant and severe penalty for driving in a way that puts the lives of other road users at risk.

### **3.4 SINGAPORE**

The salient feature of the Singapore adjudication system is that it forms part of a well-managed general crime management system of which traffic management is a component. To a certain extent, law enforcement almost seems to be draconian.



Given Singapore's history, this may have become a necessity and certainly has a positive effect regarding road traffic safety. Even with successful law enforcement and adjudication, there are still cases where people either do not pay their traffic fines or skip bail once they have been arrested.

The Singapore system has not been decriminalized, neither has a separate institution been established with the purpose of adjudicating road traffic offences. The well-known British criminal procedure has been enhanced by a driver improvement points system and a vehicle quality control system, supported by effective management based on performance measurement. The fundamental principles of prosecution and adjudication of offences in Singapore are the same as in Namibia. Minor offences may be compounded (as in terms of section 341 of the Namibian Criminal Procedure Act, 1977), while major offences and minor offences where the compounding fee or admission of guilt fine has not been paid are still adjudicated by the courts. A few adjustments of the criminal procedure, together with the computerisation of both the courts and the police systems, however, ensure the effective enforcement of road traffic offences.

Compliance with the law is obtained through friendly assurance that if a fine is not immediately paid, the offender can be sure of a court procedure following, resulting in a fine twice or three times the amount of the original fine, or even imprisonment, if found guilty. In the case of driver behaviour the fine is coupled with demerit points and in the case of vehicle quality deficiencies, with the suspension of the use of the vehicle.

The Traffic Police are empowered to issue "traffic tickets" instead of summonses for which the approval of the court is needed. The following types of traffic tickets/notices are issued:

- For parking offences (with or without demerit points)
- For moving offences (with or without demerit points)
- Notice of Traffic offence
- Request for Driver's particulars
- Notice to attend court

If the offender does not pay the traffic ticket and a notice to attend court is ignored the failure to attend court will result in a warrant of arrest issued against the offender. The Driver Improvement Points System (DIPS) is designed to identify high-risk motorists or habitual offenders and to stop them from driving for a specified period of time. The system also requires recalcitrant offenders suspended for one year or longer to re-sit and pass a driving test before they are allowed to drive again. The DIPS allows a driver to accumulate 24 points within a 24-month period before he/she becomes liable for suspension. If a driver has been suspended before, he/she is only allowed to accumulate less than 12 points within 12 months. A first time suspension lasts three months. Subsequent suspensions can range up to three years.

There are 8 categories of offences that carry demerit points. They are grouped under 3, 4, 6, 8, 9, 12, 18 and 24 demerit points according to the severity of offences:

Aside from the adjudication system in place in Singapore, it has implemented several innovative programmes as part of their traffic law enforcement system. These programmes relate to fines and include an incentive scheme for good drivers and vehicle quality control.

Fines relate to an offender's income level and maximum and minimum fines are prescribed by the legislation. The Singapore Government and the Insurance industry negotiated an incentive scheme where drivers with clean records receive a discount on their insurance premiums. There are 29 participating insurance companies. Motorists with a clean driving record for three years enjoy a 5% discount over and above the usual No-Claim Bonus when they renew their insurance policy. They must not have made any claims on their vehicle's insurance for the past three years.

Singapore introduced a total vehicle quality control system that proved to be very effective. The Island allows only the number of vehicles onto the island that is optimum in relation to the available infrastructure and safety. This means that before a person is allowed to buy a vehicle, he/she must first obtain a certificate of entitlement, authorizing the acquisition. The restricted number of vehicles is maintained by increasing vehicle licence fees in accordance with the age of the vehicle. It is thus not cost-effective to own an older vehicle that is not well-maintained. At a certain point it is not cost effective at all to own the older vehicle. The programme to restrict the total number of vehicles results in a vehicle population that is relatively new and is well maintained.

#### **4. PART 4: FUNDAMENTALS AND THE WAY FORWARD**

##### **4.1 EXTRACTION OF FUNDAMENTAL PRINCIPLES**

From the status quo study and the international comparison of legal principles and adjudication systems, fundamental principles were extracted in accordance with which it is proposed that the current Namibian system of adjudication is adapted. These principles are –

- The non-negotiable status of the Constitutional rights and the fundamental principles of the criminal law;
- The nature of the sanction/punishment in relation to the type of offence committed;
- The knowledge that prosecution will follow the committing of an offence;
- Law enforcement, prosecution and adjudication must be one element of a traffic management system.

##### **4.2 SYNTHESIZING FUNDAMENTAL PRINCIPLES TOWARDS THE SUCCESSFUL PROSECUTION AND ADJUDICATION OF ROAD TRAFFIC OFFENCES**

Road traffic accidents (and therefore deaths and injuries) are directly linked to road traffic offences. It is possible to co-ordinate the enforcement, prosecution and adjudication of traffic offences with the strategic management plans of all institutions involved if effective traffic safety strategies are developed concomitantly with the management plans of the Roads Authority, the Road Traffic Safety agency and the

Road Fund Administration. This entails that the Lower Courts, the Nampol Traffic Unit, the Road transport Inspectorate of the Roads Authority and the Municipal Traffic Units must be involved in the development of a strategic law enforcement management plan for Namibia.

Such a strategic law enforcement management plan must have as its goal the reduction of injuries and death as a result of road traffic accidents and the protection of infrastructure. Such an exercise must be co-ordinated under the auspices of the Minister of Transport, Works and Communication, whether from within the Ministry or from within one of the Agencies. The Law Enforcement Agencies and the Lower Courts should not be expected to lose their autonomy or independence, though. For this reason, a joint executive body should be established with the purpose of co-ordinating the law enforcement effort. The Directorate of Planning and Transportation Management or the Road Safety Agency should perform the day-to-day management of the strategic law enforcement management plan.

To successfully implement any strategic law enforcement management plan, the executive body should be able to –

- Identify the offender;
- Identify the vehicle with which the offence is committed;
- Identify habitual offenders
- Determine the relation between offences and road traffic accidents;
- Quantify the cost of road traffic accidents to the country
- Quantify safety goals in relation to savings to the economy
- Identify roads or places in a road that pose a safety risk
- Identify the part of the maintenance cost to the road network that is caused by offenders;
- Determine the optimum level of expenditure in relation to road traffic law enforcement.

A management programme such as required for the efficient management of road traffic could best be achieved if supported by legislation and proper information and a computerized management system.

The Road Traffic Offence Model was developed based on our finding that the three countries visited, as well as the USA and Britain have not removed road traffic offences from the ambit of the criminal law at all, but have implemented administrative and management procedures that enhance the criminal procedure. The principles contained in the model should thus not be totally foreign to the role-players in the road traffic environment.

The fact that resources are strained to the limit was also taken into account. We therefore attempted to not promote the establishment of yet another parastatal, but rather to utilize available resources.

The model –

- Assumes that MWTC will manage it by appointing additional legally qualified representations officers;

- Relies on the classification of road traffic offences into the following categories:
  - Serious Driver Behaviour Offences;
  - Less Serious Driver Behaviour Offences and Serious Technical Offences;
  - Petty Technical Offences;
  - User Charges (vehicle licence fees and parking fees).
- Relies on the implementation of a computerized road traffic management system, accessed by MWTC/the Road Safety Agency, the Lower courts, Nampol, the Municipal road Traffic Units and the Road Transport Inspectorate of the Roads authority.
- Assumes that only the serious driver behaviour offences and licence suspensions will be reflected on the offender's criminal record;
- Does not make use of compoundment of offences (the offer to pay a fine to prevent prosecution). Instead a 48-hour notice to rectify the deficiency is issued, the default on which prosecution follows;
- Relies on a driver improvement points system being implemented in accordance with which a driving licence is suspended for prescribed periods of time if a driver has accumulated a predetermined number of points in a predetermined period of time.

Serious driver behaviour offences should include at least the following:

- All drunk driving offences (blood, alcohol and influence);
- Reckless and negligent driving;
- Reckless or negligent driving involving death or injury;
- Hit and run accidents.

Serious technical offences would as an example include:

- Failing to obtain an abnormal load permit;
- Serious overloading (exceeding a predetermined level);
- Serious speeding (exceeding a predetermined level);
- Operating a motor vehicle without a cross border permit under circumstances when such a permit is required;
- Operating a motor vehicle without an operator card if such a card is required;
- Serious unroadworthiness.

Petty technical offences will include offences such as direction indicator not being in a working condition or the vehicle not displaying a token indicating that the vehicle is subject to a specific speed limit.

Vehicle registration and licensing fees are determined by the road Fund Administration Act, to be road user charges. Parking fees are seen internationally as user charges. User charges should be collected and the penalties imposed should be seen as penalty interest, rather than a criminal sanction.

With regard to the collection of fines, all the countries examined allow the payment of fines or user charges by instalment. Our system currently does not allow for that except under specific circumstances as determined in the CPA. We noted especially in New Zealand that the instalment option created a huge administrative burden on

the court system. In addition hereto, the granting of this option will make inroads into the income from fines unless interest is charged. Granting an instalment option is granting credit and the usual principle that credit comes at a price should apply if this option is followed. The RTOM does not provide for the instalment option. In addition to a “debt” collection process, the New Zealand legislation allows the immobilization of the motor vehicle while the fine remains unpaid. This might be very difficult to impose in Namibia, but should be considered.

The Road Fund Administration Act, 1999, is the legal vehicle that regulates the funding of roads and related matters. The Road Fund must, in terms of section 17 of its enabling Act, be utilized mainly towards the management of the roads network. Contributions by the road Fund to other supporting and ancillary functions are, however, also authorized by section 17 of the Road Fund Administration Act, 1999. The Road Traffic and Transport Act determines that any fines imposed or money estreated as bail in terms of that Act, must be paid into the State Revenue Fund (section 109). It follows that the Road Traffic and Transport Act must be amended accordingly.

Given that the Road Fund Administration must defray the cost of law enforcement and adjudication of traffic offences, and that the RTOM will alleviate the administrative burden of the courts considerably, it is proposed that the fines and user charge penalties should be paid into the road fund.

The RTOM, as mentioned, relies inter alia on a driver improvement points system (DIPS) that will result in the suspension of a driving licence once the predetermined number of points within a set period of time. The DIPS all over the world are very similar. In this regard, the USA, Australia and the UK were studied in addition to the countries discussed in this paper. Innovative penalties have been implemented Drivers are re-trained, perform community service in relation to traffic safety, are forced to undergo traffic “attitude” courses, etc. A salient feature of all the countries examined in this regard is that the penalties are fixed. Neither the Court nor the presentation officers have any discretion not to award penalty points. This fact necessitates the careful consideration to the determination of the number of points to be awarded in relation to each offence.

The study indicated that innovative penalties must be implemented in relation to traffic offences. Fines, however, remain the backbone of the system of punitive measures to be implemented. The problems experienced in Namibia in relation to the setting of the level of fines are experienced throughout the world. These problems have in all the countries visited as well as in the USA and the UK been solved by implementing a system of fixed fines, adding cost as the process develops. We propose a model that determines minimum and maximum levels for fines and that leaves the Court with discretion, but limits the Court to realistic fine levels.

## **5. INFRASTRUCTURE**

This study developed an infrastructure model for the road traffic management system (RTMS), including the RTOM. The infrastructure model was developed in relation to both implementing the proposed model assuming that no infrastructure is available and taking cognizance of the existing infrastructure. Certain assumptions had to be

made and the figures included in the Annexure are estimated figures. Readers should allow a margin for error.

The model further assumes that the income generated by fines will be paid into the Road Fund.

As the estimated expenditure and income of the South African System is available, those figures were projected to show the potential “Namibianising” the South African System. The South African System will be self-supporting or showing a profit. This assumption is based on the turnover of cases. With nearly 7 million drivers as opposed to the Namibian average of 200 000, the turnover of offences will be minimal in relation to that of South Africa. The conclusion was made that the South African model will not be suited to Namibia.

Finally, the cost of the administration of an adjudication system has been compared to the savings that can be brought about to the country if road traffic offences can be reduced.

## **6. CONCLUSION**

The current road traffic law enforcement, adjudication and prosecution procedures have its strengths and weaknesses. The strengths should be enhanced and the weaknesses improved.

The problems experienced locally are not unique to Namibia, the same problems occur worldwide. Many examples of adjudication models are available, but their common denominator is that none of the countries have totally removed traffic offences from the criminal justice system. All the adjudication models are driven by improvements to the process, strong administrative support and strategic management.

The RTOM proposed in this document is based on non-negotiable fundamental rights, innovations of the international community, the classification of offences, the implementation of a strategic management plan supported by a traffic management system.

# **PART 1 : TRAFFIC OFFENCES MAGNIFIED**

## **1.1 SETTING THE SCENE**

In 1994 the Ministry of Works, Transport and Communication, in its White Paper on Transport Policy, paved the way for an investigation into a system that would result in a more effective means of adjudicating road traffic offences. The above White Paper concluded that the current ineffectiveness of the system has a highly detrimental effect on road safety and is primarily due to the fact that traffic offences are considered as petty offences by both the courts and the transgressors. As a result the transgressors are not paying fines and the adjudication of these types of offences is not enjoying preference. Furthermore, the disregard of the legal criminal process by the transgressors of minor traffic offences could result in a criminal record. The White Paper proposed that minor offences should be subject to administrative adjudication and the immediate imposition of fines.

The problems experienced in Namibia are not unique. Several countries, which experienced the same problems, removed road traffic offences from their criminal judicature in order to alleviate the burden on said judicature and to enable the efficient prosecution of road traffic offences.

The Issues Paper follows from the recommendations of the White Paper on Transport Policy and it investigates the current road traffic and transport environment with specific reference to its applicable legislation, fiscal framework and prosecution process and the application thereof at the coalface. It also investigates the alternative systems implemented in various parts of the world.

## **1.2 ROAD TRAFFIC LAW CAPTURED**

Road traffic law does not exist in a void. It is not created or developed, enforced or prosecuted as a single isolated or detached element. As a result, a holistic understanding of law as a conceptual structure is needed to determine the existence, or lack, or symmetry between the various pillars of road traffic law. A holistic understanding of the laws does not imply an in-depth understanding, it merely requires knowledge of the distinction between substantive law and adjectival law and the classification of the law. The following paragraphs pinpoint the position of road traffic law within this classification.

### **1.2.1 Substantive and Adjectival Law**

In broad terms the law can be divided into substantive and adjectival law. Substantive law is that part of the law that describes the rights and obligations of the subjects of the state, while the adjectival law is that part of the law that provides the procedures for the enforcement of the substantive law. In the case of road traffic and transport offences, the Road Traffic and Transport Act, 1999 (Act No 22 of 1999) is the substantive law determining the rules on road behaviour and standards, while the Criminal Procedure Act, 1977 (Act No 51 of 1977) (CPA) is the adjectival law providing the enforcement procedures.

Procedural law is divided into criminal procedure, civil procedure and the law of evidence. Criminal procedural law, as contained in the CPA, serves to bring an alleged offender before Court to be formally accused and afforded the opportunity to defend him or herself. Civil Procedural law contains rules with regard to the preparation and conduct of a trial, as well as the collecting of information to enable a decision on the merits of the case at hand.

The distinction between civil and criminal procedural law is not always clear. In some instances, eg a criminal offender may be ordered by the court to pay damages to his/her victim (civil law concept) or a fine in terms of a criminal offence may be retrieved in terms of the procedure prescribed for the retrieving of a debt between two individuals. The following diagram <sup>1</sup> sets out the law as it developed from the early Roman civilization. (The law described below can be both substantive and adjectival).

<sup>1</sup> Introduction to Mercantile Law, Second edition, JPA Swanepoel, CT Makins, SJ Lapping, JJ Reynecke, p 6



## **1.2.2 Public and Private Law**

The public law regulates the relationship between the state as an organ of authority and the individual (a vertical relationship) while the private law regulates the relationship between individuals within a community (a horizontal relationship).

The establishment of specific behaviour as road traffic or transport offences is part of the public law, ie a vertical authoritative relationship. The Road Traffic and Transport Act, 1999, is part of the criminal law and the adjudication thereof is conducted in terms of the criminal procedural law.

The classification of the law, classifies road traffic law as that part of the public law within national law. As part of public law, the road traffic law functions in the habitat created by it and is partner to a dynamic relationship between the road traffic law, the Constitution and the criminal law. The applicable principles of the Constitution and the criminal law must be considered when developing any system of adjudication of offences.

## **1.3 ROAD TRAFFIC LAW IN PARTNERSHIP WITH THE CRIMINAL LAW AND THE CONSTITUTION**

As stated above, the road traffic law does not exist in a void. Government policy, international conventions on traffic, regional protocols on traffic and transport and various suites of legislation influence road traffic law. The Constitution and the CPA, however, have the most profound impact. Both last-mentioned Acts of the national Assembly contain fundamental principles for the protection of the citizens of Namibia against unreasonable or cruel state intervention. It is within the enabling framework of these suites of legislation that the development of a different system for the adjudication of traffic offences will have to take place.

### **1.3.1 Fundamental Principles of the Criminal Law and the Constitution**

#### *1.3.1.1 Fundamental Principles of the Criminal Law*

It is a fundamental principle of the criminal law that an accused's criminal liability may only be determined in a court of law by an independent and objective presiding legal officer after a prosecutor has brought a formal accusation against the alleged offender and if the accused is afforded the opportunity to rebut the accusation. It is also generally accepted that such a hearing must, except under exceptional circumstances, be conducted in the presence of the accused. <sup>2</sup>

It follows that a deviation from the fundamental principles will cause some dissent in legal circles. Deviations, however, are in modern times commonplace. Various examples of "out of court settlement" in criminal cases are found throughout the world.

<sup>2</sup> Strafprosesreg, JL Snymann, DW Morkel, p141

The deviation from the above fundamental principles by “out of court settlement” can be traced back to the sixties in Europe. The policies on settlement out of court are based primarily on considerations of cost efficiency.<sup>3</sup>

In addition to cost efficiency, the following sets out the common concerns of criminal systems throughout the world: *“Among the crime phenomena that are placing criminal justice systems under new strains, mass crime and mass delinquency rank high. Furthermore, organized crime, transnational and cross-border crimes, and new crimes, eg economic and environmental crimes have been put on the policy agenda.”*<sup>4</sup> *Mass crimes and complex crimes have caused capacity and overload problems and have contributed to a significant trend towards simplification and streamlining of basic criminal law and criminal procedure. Added to this, organized crime, economic crime and other types of rational crime have necessitated an ongoing search for measures likely to improve clearing rates and overcome problems associated with both, evidence as such and the gathering of evidence, which have become a notorious field of concern in almost all criminal justice systems.*

*Then, the complexity of criminal cases has increased dramatically, with certain types of economic, environmental and transnational crime placing unprecedented demands on the procedural, legal and technological expertise of criminal prosecution and criminal courts. Finally, on top of all this, the costs of criminal justice have increase dramatically. Here the point comes to mind that implementing basic principles and standards is likely to result in higher costs. Therefore reform of criminal law and of the system of criminal sanctions is associated with the question of how much of the gross national product should be devoted to crime prevention and criminal justice, and how criminal justice resources should then be distributed and allocated. Then there are new types of offenders to consider – offenders who are to some extent linked to new crime phenomena, eg the rational offenders, the minority offender and criminal organisations or corporate criminals. With these types of offender the basic approach adopted in criminal justice systems in the sixties and seventies, viz rehabilitation and re-integration focused on the individual offender, has come under considerable pressure. Socio-economic changes in modern societies also bring new demands. Societies in transition undergo major changes, with black markets and the shadow economy representing new social and economic frameworks and producing new at-risk groups out of which, and for which, crime policy and criminal justice reform has to be developed. Then the victims come back into the picture, and with them their needs as well as their expectations of the criminal justice system in terms of compensation and restitution. In addition to the victim, the role of the public – more specifically the role of the community – in crime control, as well as the private sector’s potential for crime control, the administration of justice and criminal correction, have become issues in debates on crime policy.*

<sup>3</sup> South African Law Commission, Research Paper 19, “SETTLEMENT OUT OF COURT: A comparative study of European criminal justice systems” ISBN : 0-621-31583-4,p.5

<sup>4</sup> See Farkas, A : Stand und Tendenzen der Strafrechtsreform in Ungarn. In : Eser, A; Kaiser G; Weigend, E (Eds): Von totalitärem zu rechtsstaatlichem Strafrecht Kriminalpolitische Reformtendenzen im Strafrecht osteuropäischer Länder. Freiburg 1993, pp 43-53, p 50.

*In summarizing these challenges it may be said, therefore, that on the one hand crime has become a mass phenomenon, while on the other the complexity of certain types of crime has definitely increased. The former, surely, is accounted for by the development of not only opportunity structures, but also risk structures in modern societies that make crime a ubiquitous behaviour, particularly among the youth.*

*The latter may be seen as a consequence of the creation and application of criminal law in complex environments and the corresponding need for criminal justice systems to develop equally complex structures. Thus, criminal law interferes with other systems (economy, commerce or the environment) which organized interests require conditions of implementation quite different from those in the field of conventional (street) crime and traditional criminal law.”<sup>5</sup>*

With regard to traffic offences, the above report on p.10 states the following: *“In that decade (the sixties), too, criminal policy focused also on the decriminalization of a wide range of behaviour thought to be better dealt with within a framework of administrative sanctions. In particular, traffic offences were downgraded to so-called administrative offences where only administrative fines are available. Administrative fines are imposed by a central authority within the general state administration. They are subject, upon appeal by the offender fined, to revision by an ordinary court.”*

Due to the sparse population (including the vehicle population in Namibia) the need for reform of the criminal procedure in relation to road traffic and transport offences may not have been as pressing as in Europe. Various European countries have recently implemented shortened criminal procedures in relation to lesser crimes. These procedures are followed if the offender consents and admits to the offence. In the case of these procedures, the role of the prosecutors and the police in the adjudication of offences increase and that of the presiding officer (magistrate) decreases. In Europe, these procedures were implemented for criminal offences, excluding serious crimes. It must be kept in mind that traffic offences in these countries, except those, which constitute serious crimes (felonies), such as culpable homicide (eg in the case of reckless driving leading to the death of a person), have already been removed from the ambit of the criminal law system and are heard before administrative courts. The European legal community is therefore already proceeding with the simplification of its criminal procedures in relation to common criminal, although minor, offences.

### 1.3.1.2 *Constitutional Principles*

The Namibian Constitution requires that every person must be afforded a fair trial. Article 12 (1)(a) of the Constitution states: *“In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law : Provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.”*

<sup>5</sup> South African Law Commission, Research Paper 19 : SETTLEMENTS OUT OF COURT : A Comparative Study of European Criminal Justice Systems : ISBN:0-621-31583-4, P.7

Subarticle (1) © furthermore requires that in criminal cases judgements be given in public, except where the interest of juvenile persons or morals otherwise require.

The above provisions entrench the fundamental principles of the criminal law as described in paragraph 3.1. In other words, a criminal hearing must be conducted publicly and in the presence of the accused.

The principle of a public trial has not yet been tested in Court except in relation to a disciplinary hearing of an attorney in terms of the law society's rules where the Namibian High Court held that the hearing does not fall within the ambit of the Constitution as it does not constitute either a criminal or a civil case. However, the Constitution seems to be clear on the issue of a fair and public trial. Various articles of the Constitution come into play when the procedure for a trial is considered. While the articles of the Constitution must be interpreted in context with one another, the ordinary rules of interpretation are not available in the interpretation of the Constitution. In *Swart v The Minister of Home Affairs Namibia, 1998(3) SA 338 (NM)*, the Court held that *"the ordinary rules of statutory construction could not be applied without more to the construction of the Constitution. One had to be careful not to interpret the Constitution like any other regulatory statute. The reasons were, amongst others, that Constitutions were more important than other laws, and were intended to be much longer-lived than ordinary legislation, continuing to operate in social, economic and political conditions unimagined when they were first formulated. Constitutions tended to employ less precise language, requiring greater judicial elaboration than other legislation."*

It follows that one is left to an interpretation that is considered to be reasonable in relation to the economical, political and social standards of the day.

Article 12(1) of the Constitution, providing for a fair and public trial of criminal offences, can only be limited under the conditions set by article 22 thereof. This article provides for the limitation of fundamental rights and freedoms. It states: *"Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorized, any law providing for such limitation shall:*

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;*
- (b) specify the ascertainable extent of such information and identify the Article or Articles hereof on which the authority to enact such limitation is claimed to rest."*

Article 25 of the Constitution provides for the enforcement of the fundamental rights and freedoms by affording the Court various powers and giving any person who claims that a personal right or freedom has been infringed on or threatened, *locus standi* to approach the Court.

Whether a system not requiring a public hearing of road traffic and transport offences will be accepted by the Ministry of Justice under the Constitution, seems unlikely, unless the technicality of the offences and the almost non-criminal nature thereof constitute compelling arguments in terms of article 22.

## 1.3.2 Current Legal process

### 1.3.2.1 *A Brief Overview of the Legal Process*

As stated above the relationship between the procedural and adjectival law creates the environment for road traffic offences. The Road Traffic and Transport Act, 1999, creates the offences (and to a lesser extent the Road Fund Administration Act, 1999) and the Criminal Procedure Act, 1977, lays down the procedures whereby either the offence is condoned by the law in exchange for money or the presence of the offender is obtained in court.

An offender, after having committed a road traffic offence, may be confronted with two different types of notices (generally known as a fine). Depending on the type of offence, a traffic law enforcement officer issues a notice, either in terms of section 341 or in terms of section 56 of the Criminal Procedure Act, 1977.

A section 341 notice may only be issued for certain types of offences (for example, speeding and unauthorized parking). The offender is granted an opportunity to pay a certain amount in exchange for the law to disregard the offence. If the offender pays the amount required he/she does not incur a criminal record. Should the offender not pay that amount as required by that notice other provisions of the Criminal Procedure Act, 1977, are activated to ensure that the offender is duly punished. (This type of section 341 notice is a deviation from the fundamental principles of the criminal law, which is entrenched in the Constitution).

There are other types of traffic offences that require a notice, different to the notice in terms of section 341. This notice, issued in terms of section 56 of the Criminal Procedure Act, has as its purpose a directive to the offender to appear in court. The offender does, however, have an option to pay a certain amount as an admission of guilt without having to appear in court. (An admission of guilt fine is, as is the case with a section 341 notice, a deviation from the fundamental principles of the criminal law, which is entrenched in the Constitution). Should the offender pay the admission of guilt he/she incurs a criminal record. Should the offender not pay the admission of guilt as required by that notice and fail to appear in court, other provisions of the Criminal Procedure Act, 1977, are activated to ensure that the offender is duly punished.

Once an offender has failed to heed the opportunity provided by or the directive of the section 341 or section 56 notices respectively, the court will issue a summons in terms of section 54 for the offender to appear in court. Again the offender is granted an opportunity to pay an admission of guilt fine before appearing in court. However, should the offender not pay that admission of guilt or not appear in court, the offender is guilty of an offence and liable to a further fine. The court may also issue a warrant of arrest under these circumstances. The Prosecutor-General may further decide that an offender must stand trial or be sentenced by a Higher Court, in which case an indictment is issued in terms of section 141 of the Criminal Procedure Act.

The requirements of the different notices and procedures of the Criminal Procedure Act, 1977, are discussed in more detail below.

### 1.3.2.2 *Section 38 of the Criminal Procedure Act*

Section 38 of the Criminal Procedure Act, 1977, determines four methods in accordance with which the presence of the accused in a court may be obtained:

- ❖ A written notice in terms of section 56;
- ❖ A summons in terms of section 54 (Lower Courts);
- ❖ An indictment in terms of section 144 (1)(High Court);
- ❖ Arrest (Sections 39 – 53)

### 1.3.2.3 *Notice to Appear in Court*

Section 56 of the Criminal Procedure Act, 1977, determines that a peace officer may issue a notice to appear in Court to a person. The peace officer must have a *reasonable* suspicion that the person has committed a criminal offence and that a competent court will on conviction, not impose a fine of N\$300.00.

The notice must be handed to the accused and must –

- ❖ Contain the name, residential address and the occupation/status of the accused;
- ❖ Direct the accused to appear at a certain place (e.g. Windhoek Lower Court F) on a certain date to answer to the charge;
- ❖ Contain an endorsement to the effect that the accused may admit guilt and pay a fine determined on the notice without appearing in Court;
- ❖ Be signed by the peace officer that certifies that the original notice has been given to the accused and that the contents of the notice were explained to the accused.

If the accused does not pay the admission of guilt fine or appear in court on the date determined in the notice, the court may issue a warrant of arrest for his/her arrest. The fines determined on the notice by peace officers, will in the case of traffic and transport offences, be those contained in the “fines list” that has been compiled by the Ministry of Works, Transport and Communication in co-operation with the Windhoek Municipality and the Namibian Police, and that has been approved by the District Magistrates throughout the country.

### 1.3.2.4 *Summons to Appear in Court*

If the offence for which the accused is prosecuted is too serious to be handled by way of (a section 56) written notice, but the circumstances do not necessitate the arrest of the accused, a summons to appear in court is issued to him or her in terms of section 54. The prosecutor in this case compiles a charge sheet and hands it to the clerk of the court, who in turn issues the summons based on the charge sheet. In the case of road traffic and transport offences in Namibia, the Windhoek Municipality and the MWTC have compiled pro forma charge sheets and made them available to other prosecuting authorities.

The summons must contain the following information:

- ❖ The charge against the accused;
- ❖ The place, date and time set for the appearance of the accused before a court.

The summons is given to a person authorized to execute the summons – ie a bailiff, police officer and various other officials, who must serve it on the accused. The summons must be given to the accused personally and if that person cannot be found, to a person over the age of 16 at the accused's workplace, place of residence or place of business, and who is working, living or living at those places. The summons must be served on the accused at least fourteen days (excluding Sundays and public holidays) before the date of the hearing. The person who served the summons, must hand in a return of service to the Court. The return of service may, in the case of the accused not attending the hearing, be submitted to the Court as *prima facie* evidence that the summons was served.

An accused that does not attend Court after having been summonsed to do so is guilty of an offence and liable to a fine. The Court may also issue a warrant of arrest under these circumstances.

If the Prosecutor General decides that an accused must stand trial or must be sentenced in a higher court, the presence of the accused is obtained by the indictment in terms of section 141 of the Criminal Procedure Act, 1977. The particulars of the indictment are the same as that of the summons, but the title differs indicating the different status of the Court.

#### 1.3.2.5 *Indictment*

If the accused is to be summarily tried, the indictment has to contain –

- ❖ A summary of the substantial facts of the case which are in the opinion of the Prosecutor General necessary to inform the accused of the charge against him/her and which will not prejudice the administration of justice; and
- ❖ A list of the names and addresses of the witnesses that the Prosecutor General intends to call.

As a rule, all criminal cases are tried summarily. The Prosecutor General may, however, determine that a provisional enquiry be conducted. This will be done eg where the Prosecutor General is, despite the accused having pleaded guilty, not convinced of the guilt of the accused. A provisional enquiry has the potential to harm the state's case as the state must indicate its witnesses and the enquiry will indicate to the accused the basis of the state's case, while the accused does not have to do the same.

#### 1.3.2.6 *Warrant of Arrest*

Arrest as a means to obtain the presence of the accused in Court, must be treated with circumspection as wrongful arrest has serious implications, both for the person being wrongfully arrested and for the authority. The authority issuing and executing a wrongful warrant of arrest may be held liable for that arrest, with resulting pecuniary and disciplinary implications.

The right to freedom of movement is a fundamental right that since 1990 has been entrenched by the Constitution. If this right is encroached on or taken away from an

individual, the consequences are very serious. To maintain a free and democratic society, it is also very important that the law respects these personal rights and freedoms.

There are many examples in the body of case law with regard to the legality of arrest. It seems that the Courts agree that arrest must be aimed at bringing the person before a Court and even then the person being arrested, must be charged within 48 hours<sup>6</sup> after the arrest with the crime alleged to have been committed.

### 1.3.2.7 *Compounding of Certain Offences*

Section 341 of the CPA empowers a peace officer to issue a notice to a person who has committed an offence, stating the place and the time of the offence as well as the fine that a competent court will probably impose (the maximum limit is currently set at N\$300). The notice in terms of this section affords the “accused” the opportunity to pay the fine and in so doing prevent prosecution.

These notices may only be issued for offences listed in Schedule 3 to the CPA. Schedule 3 refers to the following offences:

- (a) Speeding;
- (b) The driving of a motor vehicle without lights or other distinctive device;
- (c) Illegal parking or stopping;
- (d) Driving at a place or time when it is not allowed;
- (e) Excessive noise or a faulty vehicle;
- (f) Not licensing the vehicle;
- (g) Unlicensed driver.

The nature of a section 341 notice is that of a “legal bribe” and serves to decongest the courts. As such, the section serves a purpose, but at best, the list is very outdated and the limit of N\$300.00 is far too low to pose a threat.

The person who pays the above fine, is not criminally prosecuted and does not, on payment of the “fine” incur a criminal record. On the other hand, a person paying the admission of guilt fine contemplated in section 57 of the CPA (see par 1.3.2.4 above) may incur a criminal record.<sup>7</sup> The money contemplated in section 341 of the CPA, can strictly speaking not be seen as a fine and only ensures that the person concerned is not prosecuted.

The principles contained in the Constitution and the Criminal Procedure Act, 1977, as discussed above, are applied, in the case of road traffic laws, by the Ministry of Works, Transport and Communication, the Namibian Police, municipal traffic officers, road transport inspectors and the lower courts. The following chapter represents the findings of an investigation into their manner of operation, level of co-ordination and level of success.

<sup>6</sup> Article 11(3) of the Constitution and *S v Mbaphapa*, 1991(4) SA668(NM)

<sup>7</sup> *S v Longdistance (Natal)(PTY)(LTD) and Others*, 1990(2)SA277(A)



## PART 2 : A PRACTICAL REVIEW OF THE ADJUDICATION OF ROAD TRAFFIC OFFENCES IN NAMIBIA

### 2.1 THE APPROACH

After determining the theoretical legislative environment within which road traffic offences should be adjudicated as discussed in Part 1, it was necessary to determine how efficient these principles and procedures are when applied in practice. As a result two investigations were launched, one into the flow of fines generated by the traffic offences and one into Magistrate's Court process.

The purpose of these studies was ultimately to determine the following:

- Whether fines generated in terms of road traffic legislation were exclusively utilized for the purpose of road traffic enforcement and prosecution and channeled accordingly; and
- What the level of success of the enforcement and prosecution of road traffic offences is.

In order to determine the above-mentioned, we attempted to obtain statistics and reasons for the following questions:

- How many of which type of offences are prosecuted?
- What is the payment level of section 341-notices?
- What is the payment level of section 56 notices?
- What is the payment level after a summons is issued?;
- How many offenders appear in court?;
- How many offenders do not respond to the first prosecution notice issued to him/her?;
- Of the offenders appearing in court, how many are found guilty?;
- Of the offenders that do not appear in Court, how many are apprehended?;
- What type of punishment is imposed on offenders found guilty?;
- Of the court appearances not found guilty, what are the reasons for acquittal?;
- If prosecutors reduce fines, what are the reasons therefore and are fines in fact reduced?

Of the above, the flow of traffic fines could be established, although the information is not deficient. With regard to the court process, however, due to the fact that the courts do not have a computerized management system, not one question could be answered with absolute certainty. Our findings in this Part had to be based partly on the figures obtained from the Windhoek Municipality, Nampol and the Windhoek Magistrate's Court and partly on the perceptions of the prosecutors and law enforcement officers as well as our own experience.

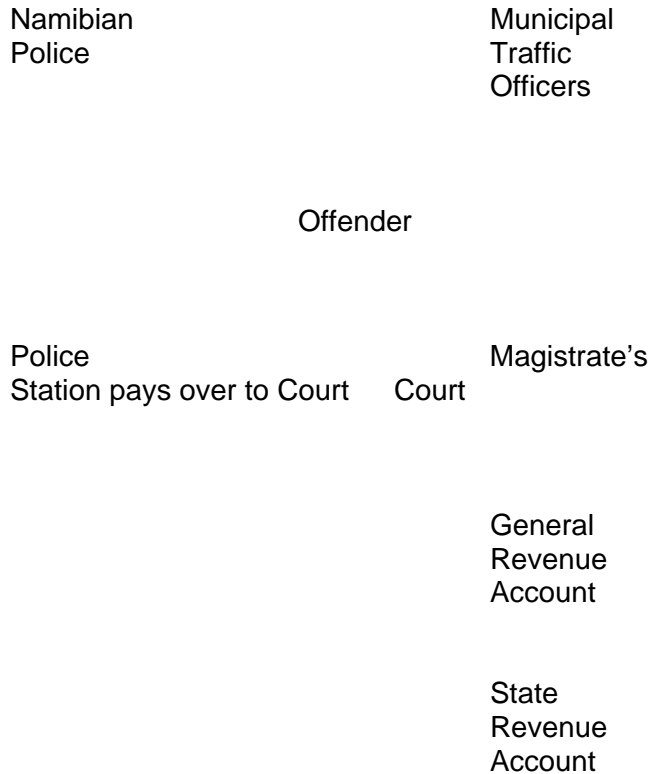
### 2.2 FINES

In this paragraph the various traffic offences and fines, the collection of fines, the end destination of fine money and related subjects are addressed. In order to establish these aspects the following institutions were consulted with:

- Windhoek Municipality

- Ministry of Justice (Magistrate's Court – WHK)
- Ministry of Finance
- Namibian Police
- The Road Fund Administration

**2.2.1 Flow Chart Indicating the Flow of Moneys collected by way of Fines**



**2.2.2 Explanation of Flow Chart**

The Namibian Police, the Road Transport Inspectors and the various municipal traffic officers issue written notices as authorized under the Criminal Procedure Act, 1977, under legislation providing for traffic offences. Following is a list of legislation that provide for traffic offences and the payment thereof:

- Road Traffic Ordinance 30 of 1967 (repealed from 6 April 2001)
- Cross Border Transportation Act 1998 (repealed from 6 April 2001)
- Road Fund Administration Act 18 of 1999
- Road Traffic and Transport Act 22 of 1999
- Criminal Procedure Act 51 of 1977
- Various Municipal Bylaws

Depending on the seriousness of the offence, a person accused of having committed a traffic offence (the offender) may pay a composition fine, an admission of guilt fine or appear in court subsequent to a summons issued by the Court.

Fines are paid at the Magistrate's Court or at a Police office within the jurisdiction where the offence was committed. If a fine is paid at a Police office such money is paid over at the end of each day to the Magistrate's Court within that jurisdiction. At the end of each day, the various Magistrates Courts pay the fine money received by them over to the General Revenue Account. At the end of each day, moneys in the General Revenue Account are paid over to the State Revenue Account, which is the final destination of moneys.

Note that no fines are paid to a local authority.

### **2.2.3 Breakdown of fine moneys received by State**

An attempt has been made to determine the total amount of fines received by the State for traffic offences. As explained below, not all institutions involved keep separate records of such fine money and therefore no final figures can be provided. Further, only Windhoek Municipality was approached with regard to the statistics kept by them and therefore the figures below only reflect the figures provided by that municipality. The figures obtained from the Namibian Police reflect the total figures received by the police throughout Namibia.

### **2.2.4 Fines paid to Magistrates Courts**

Currently, all fines are paid to the Magistrate's Court – whether as a first stop or paid over by the Police. As state above, the courts pay such money daily over to the General Revenue Account. At the end of each month, each Magistrate's Court submits to the Ministry of Finance an account (commonly called a "beesvel") of all money paid into the General Revenue Account for that month. Included in this account is an item called "fines and forfeitures". This amount is not limited to traffic fines, but includes all fines paid at a Magistrate's Court (ie contempt of court fines, bail money forfeitures, fines under other legislation, etc). No separate accounts/records are kept by the Magistrates Courts of traffic fines received and these statistics are thus not available.

The total money received from "fines and forfeitures" from the various Magistrates Courts in Namibia for the year March 2000 to February 2001 is N\$10 148 236,92.

### **2.2.5 Final destination of moneys collected for traffic offences**

To date, all moneys collected for traffic offences are paid over eventually to the State Revenue Fund. In this account it amalgamates with all money collected by the State. No specific allocations are made from this money. It forms part of the pool of State money.

### **2.2.6 Statistics kept by the Namibian Police**

The Namibian Police keeps detailed statistics of all its various functions. During the year 2000 (January 2000 to December 2000) the Admission of Guilt (AOG) summonses issued by the Namibian Police totaled N\$ 3 522 762.00. The AOG summonses paid totaled N\$ 1 936 152.00. Thus, 55% of all AOGs are successfully collected. The reasons for unsuccessful collection are various (eg failure to pay by offender, inability to find offender due to incorrect addresses, etc, mistakes

appearing on AOG (minimal), withdrawal by court, etc). Specific statistics regarding the reasons for and percentages of unsuccessful collections do not exist.

### 2.2.7 Statistics kept by the Windhoek Municipality

The Windhoek Municipality also keeps detailed statistics of notices issued by them. The figures for the period 1 January 2000 to 31 December 2000 are as follows:

Notice Type	Number Issued	Monetary Value	Number Paid	Monetary Value	Success Rate
Compoundment Notices (s341 of the CPA)	40354	N\$2 775 790	15201	N\$932 423	37.7%
Admission of Guilt Fine (s56 of the CPA)	20557	N\$2 318 265	8945	N\$961 752	43.5%

The average success rate of the Windhoek Municipality is thus 40.6% for the year 2000. The defaulters were referred to the Magistrate's Court and summonses in terms of section 54 of the CPA were issued to them.

The reasons for unsuccessful collection are various (eg failure to pay by offender, inability to find offender due to incorrect addresses, etc, mistakes appearing on AOG (minimal), withdrawal by court, etc). The Municipality keeps the following statistics:

- Notices withdrawn = 20%
- Notices untraceable = 2,4%

### 2.2.8 Magistrate's Court Windhoek

It was difficult to obtain figures from the Magistrate's Court in Windhoek, as they do not keep computerized records and the figures had to be traced from the Court Registers kept. The following figures were obtained for the period 1 January 2001 to 30 June 2001:

Month	Summons Requested Per Agency	Total Summonses Requested	Summonses Issued	Court Appearance	Fines Paid
January	Npol 451 Mun 4961 RA 328	2872	2872	287	2396
February	Npol 289 Mun 2079 RA 151	2519	3802	616	2302
March	Npol 595 Mun 1992 RA 24 Fishes 8	4611	3529	590	2551
April	Npo 359	2399	3013	282	1720

	Mun 1934 RA 59 Fishes- Ries 47				
May	Npol 61 Mun 12 RA 139	212	1818	261	878
June	Npol 1374 Mun 1040 RA 110	2524	211	185	394
<b>TOTAL</b>		<b>12837</b>	<b>15245</b>	<b>2221</b>	<b>10241</b>

The above figures unfortunately do not lend it to meaningful and substantiated interpretation. The reasons are:

- The summonses are not necessarily issued in the same month that they are requested.
- The accused does not necessarily appear in Court in the same month that the summons was issued.
- The fine is not necessarily paid in the same month that the summons is requested or issued.

The above figures were obtained from the Court registers. As it is not a computerized system, an attempt was made to trace a specific summons from request to final outcome. This proved to be virtually impossible. The Senior State Prosecutor at the Windhoek office assisted as far as she could, but very little assistance was received from the registry clerk. Even had we received full cooperation from the registry clerk, it would have been very difficult to trace the “cradle to grave” history of any one case as one would have had to work through 12837 files.

Other factors that influence the validity of the information are:

- No reasons are given in the register for the cancellation of notices or decisions not to prosecute.
- The figures show a discrepancy between the summonses requested and the number of summonses issued – a total of 2408 (18%) more summonses were issued than were requested.
- Of the fines not paid, it is not indicated whether the court found the accused not guilty or whether the summons could not be served, or whether the accused did not show up for the trial.

Given the above misgivings about the validity of the information, above figures indicate that the Court shows a payment rate of 67.2%, which is above average.

### **2.3 THE MAGISTRATE’S COURT PROCESS**

The field study concentrated on the magisterial districts of Windhoek, Oshakati and Karasburg. The districts chosen represent a cross section of the types of authorities in the country, ie a developed city, a developing city and a rural town near the border. We investigated the court registers and deduced that the offences listed below are those prosecuted primarily in the courts. In other words, these are the offences for which no composition fines or admissions of guilt are paid.

The offences are listed in order of priority:

- **Windhoek**
  - Speeding;
  - Unroadworthy motor vehicles;
  - Unlicensed motor vehicles;
  - Driving without road transportation permit/required certificate of fitness;
  
- **Oshakati**
  - Unauthorized driving (driving without a driving licence);
  - Unroadworthy motor vehicle;
  - Not in possession of public driving permit or certificate of fitness;
  
- **Karasburg**
  - Drunk driving;
  - Unauthorized driving (driving without driving licence);
  - Overloading.

It seems that not many cases are withdrawn. This inference was drawn on the basis of the Windhoek statistics and from discussions with law enforcement officers and prosecutors. The reasons for withdrawal are not indicated in the court registers and therefore cannot be specified but the reasons offered were mistakes on AOGs and warrants (% very low), withdrawal by prosecution due to reasonable defence.

Offenders as a rule do not employ legal representatives to defend their cases, except in drunken driving cases. We ascribe this to the fact that the amount of the fines are very low. If the amount of the fines are increased, offenders may find it more cost effective to appoint legal representatives to defend them than to pay the fine in question.

In Karasburg, a large percentage of the cases withdrawn are prosecutions against foreigners. Foreigners generally present problems. They tend not to respond to notices issued to them in terms of section 56 of the CPA and summonses or warrants of arrest cannot be served on them in a foreign country, as Namibia has not concluded any co-operation or extradition agreements with neighbouring countries in this regard.

In Oshakati, out of a total of 3022 warrants for arrest issued by the Court, only 13 were served, due to incomplete addresses and the remoteness of the area.

With regard to the serving of warrants of arrest, Karasburg was found to authorize the warrants, but to leave them blank. They were then kept for a period of 30 days by Nampol officers, after which they were returned to court and cancelled. This occurred during the period 19 June 2000 to 28 July 2000.

During interviews with law enforcement officers and prosecutors the following transpired. Certain law enforcement officers complained that the Courts consider traffic cases petty with the resultant decrease in successful prosecution, while prosecutors said that the traffic courts are used as “training courts”, because young

prosecutors usually start their careers in the traffic courts. The inexperience of these young prosecutors has a highly detrimental effect on the more serious offences.

Mention was made of law enforcement officers being appointed and trained as traffic officers without them having driving licences. This situation is untenable and if the allegations are true, the situation should be remedied as the Road Traffic and Transport Act, 1999 requires a traffic officer to have the relevant driving licence.

Law enforcement officers complained that some prosecutors as a rule reduce fines. If fines were generally high, this practice would not have presented a problem, but whilst the fines are as low as it is in Namibia, the fines imposed on offenders do not serve as deterrent to the offender at all.

In general, though, we found that the relationship between law enforcement officers and court officials is healthy and that court officials are committed to the successful prosecution of road traffic cases.

We noted throughout, that no authority mentioned a strategic management plan with regard to the law enforcement effort. Law enforcement seems not to be consciously related to the reduction of road deaths or the protection of infrastructure. The law enforcement officials do realize the purpose of the exercise, but their programmes are not extended to the Courts, resulting in the Courts not realising the importance thereof.

Road traffic offences relate directly to accidents, which come at a high cost to both Government and the public. During 1998, there were 9391 crashes in Namibia. Of those, 1238 involved slight injuries, 759 involved serious injury, while 272 deaths occurred. If the South African model for the calculation of the cost of an accident<sup>8</sup> is used, this cost the country in the region of N\$217 885 284.00. In fatalities alone, the cost would be N\$105 127 459.00. This cost does not include accidents where only damage to the vehicle, animals or other property occurred. The indirect cost to Government with regard to the loss of human potential and the cost to business in general with regard to absence from work have not been calculated.

## **2.4 STRENGTHS AND WEAKNESSES OF THE CURRENT ADJUDICATION SYSTEM**

### **2.4.1 Strengths**

The following positive points were identified:

- The relationship between the Traffic Law Enforcement authorities and the Courts is generally good;
- Very few cases are withdrawn once they reach the Courts.

### **2.4.2 Weaknesses**

The following shortcomings were identified in relation to the current system of adjudication:

- Warrants of arrest are not executed to an acceptable level;

- Foreign offenders cannot be prosecuted successfully;
- The level of payment of section 341-notices is too low;
- Available statistics are insufficient to base any management decisions on;
- Prosecution of traffic offences bears no relation to road safety goals based on accident statistics.

## **2.5 GENERAL OBSERVATIONS ON THE NAMIBIAN SYSTEM**

While the institutions involved in the adjudication of road traffic offences are committed to achieve success, there is no coherence in the process. The level of success achieved by the institutions under these circumstances is exemplary.

Measured against international standards, though, Namibia lags behind with regard to best practices, resulting in our success levels for payment of fines and the reduction in offences leading to the reduction of road deaths and serious injury, being unacceptably low.

The purpose of creating a road traffic offence is to ensure the safety of road users and the protection of infrastructure through reducing road deaths, injury and unnecessary costs (maintenance or capital) in relation to infrastructure. To achieve the purpose of creating order in the road transport environment, the efforts of the various institutions involved must be synthesised. This is not currently the case in Namibia – not as a result of a lack of commitment or knowledge, but rather as a result of a lack of co-ordinated management of the law enforcement and offence adjudication process.



## **PART 3 : INTERNATIONAL COMPARATIVE LEGAL STUDY**

### **3.1.1 INTRODUCTION**

In evaluating the current adjudication system, a comparative study of similar systems and solutions from elsewhere in the world was undertaken. For the purpose of this study, it was decided to investigate the administrative adjudication of road traffic offences in Singapore, New Zealand and South Africa. Namibia shares a legal history with these countries in that the administrative and road traffic laws in all four countries are based on the British system. In the three countries studied, road traffic offences are adjudicated<sup>9</sup> in accordance with an administrative system additional to the criminal adjudication system. The Singapore system seems to be extremely effective, but has to be seen in context with other government policies, such as the zero tolerance approach towards all crime and the attitude of the citizens towards the law. The New Zealand system, on the other hand, seems to be effective, but with room for improvement. The total compliance rate eg for the payment of traffic fines is not measurably higher than the current rate of Namibia, while the cost of the administration of the system is substantially higher.

### **3.1.2 SOUTH AFRICA**

In 1991, the South African Government adopted the Decriminalisation Act, 1991 (Act No 107 of 1991). In terms of this Act, any criminal offence that is, after investigation by a committee established in terms of the Act, considered not to justify criminal prosecution, may be decriminalised. This entails the removal of the offence from the ambit of the criminal judiciary and the adjudication thereof in terms of an administrative adjudication system as prescribed by that Act. Despite the adoption of that Act, very few criminal offences have been decriminalised in terms thereof. The National Department of Transport of South Africa has, however, adopted an Act that establishes an agency who will administer that Act.

The figure below depicts the institutional arrangement and the procedures adopted by the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No 46 of 1998) (AARTO Act):

8 In South Africa, the administrative adjudication system has not yet been implemented but the legislation is in place.

## **STRUCTURE**

### **Minister responsible for Transport**

Board:  
3 members (non officials)  
Director: Public Prosecutions  
Registrar

**Registrar appointed by Board** ..... May request Min of Justice  
to appoint Sheriffs in  
terms of CPA

**Deputy Registrars appointed by Board : Not more than 25**

**Representations Officers appointed by Registrar (as many as may be  
necessary)**

**Administrative Support Staff appointed by Registrar in accordance with  
business plan approved by Board**

## PROCEDURES

## Timespan

Infringement  
Warrant  
Notice

Courtesy  
Letter

Enforcement  
Order

**= 84 days  
(+ 42 days)**

## AARTO Role Players

Various role players contribute to the AARTO system. These include law enforcers, administrative personnel at issuing authorities, members of the Road Traffic Infringement Agency (Agency), members of the South African Post Office (SAPO) and banks, state prosecutors and members of registering authorities and driving licence testing centres (DLTCs). Members of the motoring public also contribute, through their voluntary compliance to the conditions of the AARTO Act, to the AARTO system.

### 3.2.1.1 Law Enforcers

The AARTO process starts with the issuing of an infringement notice by an authorised officer. Authorised officers include:

- Municipal traffic officers or wardens;
- Provincial traffic officers;
- Members of the SAPS or municipal police officers, and
- Road transport inspectors.

Law enforcers are not only the witnesses to infringements, but are often also the first personal contact that the infringer has with the AARTO system. They have the responsibility to address infringers' negative road traffic behaviour and are in a position to provide valuable education to the motoring public.

### 3.2.1.2 Issuing Authority administrative personnel

Law enforcers are supported by administrative personnel at the Issuing Authority (IA). They are responsible for the processing of notices for both road traffic offences and infringements and provide administrative backup for the smooth running of the AARTO system. Administrative personnel also deal with members of the public, liaise with members of the Agency and administer financial matters.

### 3.2.1.3 *The Agency*

The Agency can be described as the heart of the AARTO system. Members of the Agency facilitate the effective and efficient administrative conclusion of infringement cases, account for fees and penalties collected and disburse penalties collected.

### 3.2.1.4 *The Printing Bureau*

The printing bureau works in close co-operation with the Agency and is responsible for the printing and delivering of documents to the South African Post Office.

### 3.2.1.5 *The South African Post Office (SAPO)*

Another important role player in the AARTO process is the SAPO. Almost all documents are posted to infringers by registered mail to ensure that these reach their destinations. Through a *Track and Trace* system, the SAPO can report on the mailing status of all registered documents. Documents may be reported received, delivered or returned to sender (failed delivery).

### 3.2.1.6 *Banks*

Through the AARTO system, infringers are afforded the privilege of making payments at various branches of banks all over the country. Infringers can choose to pay by cheque, cash, stop order or debit order. Banks provide the Agency with reviews of deposit slips/transaction receipts, disburse funds from Agency account(s) to IA's, and issue statements.

### 3.2.1.7 *State prosecutors*

State prosecutors become involved in the AARTO system only when infringers elect to be tried in court. In these cases, infringers have to appear in court, the case *will* be prosecuted, and infringers no longer have the option to pay the penalty as admission of guilt. An election to appear in court should therefore not be regarded as a soft option for infringers as it may lead to a stiffer sentence and even a criminal record.

### 3.2.1.8 *Registering Authorities and Driving Licence Testing Centres (DLTCs)*

Registering authorities and DLTCs deal with the registering and licensing of vehicles and the issuing of driving licences, professional driving permits (PrDPs) and operator cards. They will also be responsible for queries about persons and vehicles. Their task is facilitated via the NaTIS (National Traffic Information System). The national contraventions register of the NaTIS enables the management of demerit points and the suspension and cancellation of driving licences, PrDPs and operator cards. The issuing of clearance certificates for vehicles is also administered via the NaTIS.

### 3.2.1.9 *Road users*

How road users choose to react to infringement notices determines to a large extent their involvement in the AARTO process. They have various options to choose from, including the making of representations, the nomination of another person or driver in control or the election to appear in court. However, a hallmark of the AARTO system is the fact that infringers are compelled to react to infringement notices within the first 28 days after receipt of such notice. If they neglect to react to notices, the AARTO process is activated, with a whole variety of financial and judicial consequences.

## **3.2.2 Description of the AARTO process**

### *3.2.2.1 Issuing of Infringement Notice*

The AARTO process starts with an alleged traffic infringement and the issuing of an infringement notice. This notice can be issued either by hand (INM) or by registered mail (INC). Each type of infringement has a fixed penalty depending on the severity thereof. These penalties take the form of monetary penalties, but most infringements also incur a prescribed number of demerit points. The demerit point system (PDS) or penalty point system enables the identification of habitual offenders and the suspension of their licences. Therefore, it serves as a deterrent to unsafe traffic

behaviour. The fact that the demerit points for each infringement are fixed, also reduced the possibility of corruption.

The infringement notice contains all necessary detail such as the particulars of the infringers (or vehicle owner in the case of a camera prosecution), the infringement description, the amount of the penalty, the number of demerit points and the final date of payment. It provides the infringer with the following options. He/she may:

- Pay the penalty, which will constitute acknowledgement of the infringement and allocation of the specified number of demerit points on the national contraventions register;
- Apply to pay the penalty in instalments, which will also constitute acknowledgement of the infringement and allocation of the specified number of demerit points on the national contraventions register;
- Nominate a driver or person in control of the vehicle at the time of the infringement in the case of a parking infringement or a camera enforcement;
- Submit a representation to the Agency providing evidence that he/she should not be held liable for payment of the penalty in the case of a minor infringement, or
- Elect to appear in court.

If the infringer fails to pay the penalty, nominate a driver or person in control or elect to appear in court within the 28 days allowed, the case is referred to the Agency. The case is also referred to the Agency if the infringer applies to pay the penalty in instalments or submits a representation. To encourage early payment of penalties, additional fees are added with most of the ensuing procedures of the adjudication process. Early payment is further encouraged by a 10% discount if the penalty is paid within the first period of 28 days.

To ignore the infringement and other notices thus only leads to the accumulation of fees.

Once a case has been handed to the Agency, it must be concluded by the Agency and the details are updated on the national contraventions register of the NaTIS. The only exceptions are when infringers elect to be tried in court, in which case it is referred back to the IA to deal with it through the issuing of a section 54 notice. Summarised results of the outcome of infringement notices are passed back to the IA together with the monthly payment of penalties collected by the Agency on behalf of the issuing authorities.

### *3.2.2.2 Elective Procedures*

Elective procedures are those options available to infringers on receipt of infringement notices. The following are options that the infringer can choose from:

#### *3.2.2.2.1 Payment of penalties and cost*

If the infringer pays within the first 28 days after the infringement, he/she is rewarded by a 10% discount on the original penalty amount. The payment is processed by the IA, which also retains the full amount paid.

However, if payment is made as a result of the actions taken by the Agency, the full penalty together with the additional fees must be paid to the Agency through any of the bank accounts operated by the Agency. The Agency disburses the amount of the penalties collected on a monthly basis after deduction of the discount allowed to the issuing authorities.

For example, if a penalty for a minor infringement is R150 and the discount applicable (if the penalty is paid in less than 28 days after issuing of the notice) is R15, then the IA will receive an amount of R135. Should this case not be solved in the initial period of 28 days and the case is forwarded to the Agency, the infringer will have to pay to the Agency not only the R150 of the penalty, but also the cost of the courtesy letter. The IA will still receive R135 from the Agency upon successful conclusion of this case. Hence the amount received by the IA will be exactly the same irrespective of when the infringement case is concluded, and by whom.

Any amounts collected through the NaTIS by a registering authority or DLTC, are also paid to the Agency on a monthly basis after the agent's commission agreed upon has been retained.

Where an infringer opts for trial, all payments received as a consequence of being found guilty and sentenced to pay a fine, are disbursed by the Department of Justice in accordance with the current arrangements.

#### *3.2.2.2.2 Application for payment of penalty in instalments*

An infringer who acknowledges responsibility for an infringement, but is not in a position to pay the full amount of the penalty to the IA, may apply to the Agency to pay the penalty in instalments. In terms of the AARTO Act, an application for payment of instalments is treated as an acknowledgement of responsibility. Since it delineates the acceptance of responsibility, an application for payment in instalments results in the corresponding number of demerit points being added to the infringer's record on the national contraventions register.

An infringer who wishes to pay the amount of the penalty in instalments does not qualify for the discount on the penalty, even though the application has to be submitted within 28 days of date of service of an infringement notice.

#### *3.2.2.2.3 Nomination of driver or person in control*

In terms of the AARTO Act, the owner of a vehicle must be in a position to determine and identify the driver or person in control of his/her vehicle at all times. If he/she is unable to do so, this constitutes an infringement that carries both a penalty and demerit points. Where an infringement was committed by a driver who is not the owner of the vehicle, the owner can use the appropriate form to identify and nominate the driver or person in control. The owner must supply not only the name, postal and residential addresses, but also the identification number of the person, before the infringement notice directed to him/her will be withdrawn and another notice of infringement issued to the driver or person in control at the time of the infringement.



If the owner is unable to provide the prescribed identification of the person who committed the alleged infringement, but can submit factual particulars indicating that he/she did not commit the infringement (by way of a representation), the original infringement notice will be withdrawn and another notice issued to the owner. This notice will then be in respect of the owner's failure to maintain proper record of the driver or person in control of the vehicle. As mentioned above, this infringement carries both a penalty and demerit points.

#### 3.2.2.2.4 *Representation*

An infringer who is certain that reasonable grounds exist why he/she should not be held liable for the penalty payable in terms of an infringement notice for a minor infringement, may submit representations. These are not dealt with by the IA, but by the Agency on receipt of a sworn statement or affirmation, indicating the existence of reasonable grounds why the infringer should not be held liable for the penalty payable.

If the representation is successful, the infringement notice is cancelled and no fees are payable by the infringer. However, an unsuccessful representation results in additional fees being added to the original penalty. If the representation is unsuccessful, but the representations officer is of the opinion that the court may have come to a different decision, the infringer is advised to elect trial. If the infringer does not opt to go to court, the penalty and fee for considering the unsuccessful representation is payable within 28 days. Failure to pay in time will result in an enforcement order being issued by the registrar.

The Agency acknowledges receipt of all representations within 21 days. If the alleged infringer does not receive such acknowledgement he/she must resubmit the representation.

#### 3.2.2.2.5 *Election to appear in court*

Even though the AARTO aims to decriminalise most minor and major infringements, infringers still have the right to have their cases tried in court. An alleged infringer has several options to choose from for having his/her case heard in court:

- He/she can opt for trial *directly after the infringement was committed*. The IA must then be notified in the first 28 days after the infringement of the intention/election to be tried in court.
- If an infringer alleges *upon receiving a courtesy letter* that he/she did not receive the original infringement notice sent by mail, he/she may also opt to appear in court. The infringer is again allowed 28 days to make this decision.
- In the last instance an infringer may elect to be tried in court after the receipt of notification that his/her representations to the Agency were unsuccessful. This option will usually only be viable in cases where it is advised by the representations officer. The infringer is allowed 28 days to make this decision.

When an alleged infringer opts for trial, the infringement notice is cancelled by the IA and a section 54 notice is issued in terms of the CPA. From here on the infringement notice is usually of no further interest to the Agency, since it is no longer dealt with administratively, but is back in the hands of the judiciary. However, should

the infringer fail to appear in court, the registrar of the Agency is asked to issue an enforcement order, and the AARTO process is activated again.

In cases where the prosecutor declines to prosecute, he/she must notify the Agency via a *Notification of prosecutor who declines to prosecute*. The reasons why prosecution is declined are recorded in the AARTO system for management purposes and will be forwarded to the Road Traffic Infringement Agency Board on a regular basis.

### **3.2.3 Default Procedures**

Default procedures are those that follow automatically on the infringer's neglect to respond to the options available to him/her.

#### *3.2.3.1 Courtesy Letter*

Infringers who fail to respond to infringement notices within 28 days receive courtesy letters from the Agency. Courtesy letters act as reminders to respond to original infringement notices. Where minor infringements were committed infringers will be allowed to make representations to the Agency. Infringers are also afforded the opportunity to pay the penalty and fee for the courtesy letter or elect to be tried in court.

Courtesy letters are sent by registered mail to the last known address of the owner(s) of the vehicle, operator or driver registered on the NaTIS, and contain brief details of the infringement(s) conveyed by the original notice. The infringer is warned that an enforcement order will follow if he/she neglects to respond to the options provided on the courtesy letter within the given time.

Once an enforcement order has been issued, the predetermined demerit points will be added to his/her record on the national contraventions register.

#### *3.2.3.2 Enforcement Order*

The next step in the AARTO process is the issuing of an enforcement order. However, an enforcement order is only issued if an infringer has:

- Not responded to a courtesy letter;
- Not responded after notification of an unsuccessful representation, or
- Elected to go to trial but failed to appear in court.

As soon as an enforcement order has been served, the details of the infringement are recorded on the NaTIS and the demerit points incurred by the infringer are recorded in the national contraventions register of the NaTIS. The infringer is informed that demerit points have been added to his/her name, and that no licence disc, operator card, driving licence or PrDP will be renewed or issued to the infringer until the outstanding penalty and fees have been paid or the enforcement order has been revoked. He/she is also informed that a warrant of execution will be issued to recover the penalties and the fees due, if he/she should fail to comply with the enforcement order and that even more fees will be incurred by this process.

The enforcement order is sent by registered mail to the last known address of the infringer. It would only be issued 28 days after the courtesy letter has been sent to an infringer. This is to allow for late payments and possible postal delays and to enable the registrar to confirm that the infringer has not exercised any of the options available. On receipt of an enforcement order, an infringer can make a payment either into the Agency's bank account, or at any registering authority or any DLTC.

At this stage of the AARTO process, the infringer no longer has the option to take the matter to court, or make representations to the Agency, but may still apply to have the enforcement order revoked.

### *3.2.3.3 Application for revocation of enforcement order*

If an infringer receives an enforcement order, but he/she has substantiating evidence that the infringement notice or courtesy letter has not been received, then he/she may apply for a revocation of the enforcement order. The infringer has to submit an affidavit with factual particulars substantiating why the infringement notice or courtesy letter was not responded to. Typical reasons may be that the infringer had been hospitalised for a substantial time or was on holiday

The Agency will consider the circumstances as described by the infringer and inform him/her of the outcome of the application for the revocation of an enforcement order.

### *3.2.3.4 Warrant of execution*

Infringers who have failed to respond to any of the documentation sent to them are served with a warrant of execution. Once a warrant has been served on an infringer by a sheriff, the infringer has seven days within which to respond to the warrant. The amount payable at this stage includes the prescribed fees added with each step of the process.

If the infringer fails to respond to the warrant, the sheriff executes the warrant by:

- Seizing and selling movable property to defray the penalty and fees due;
- Seizing the infringer's driving licence or PrDP;
- Seizing or defacing the licence disc and operator card (if applicable), or
- Immobilising the motor vehicle involved.

The infringement and penalties due have already been recorded on the NaTIS and if the warrant cannot be served, the amount due for the warrant of execution is also added to the licence renewal notice of any vehicle owned by the infringer or the reissuing fee for the infringer's driving licence or PrDP.

### **3.2.4 Information Procedures**

#### *3.2.4.1 Notification of demerit points position, suspensions and cancellations*

Each time demerit points are allocated to an infringer on the NaTIS he/she is informed by registered mail of his/her demerit point position. When the total number of demerit points exceeds 12, the infringer is notified by registered mail of the suspension or cancellation of his/her driving licence, PrDP or operator card. Should an infringer's driving licence, PrDP or operator card be suspended, he/she is obliged to surrender the appropriate document at the IAS in whose area he/she resides forthwith. After the disqualification period has expired, the infringer may apply to the IA to return the document to him/her.

Should an infringer's driving licence, PrDP or operator card be cancelled, he/she is obliged to surrender the appropriate document at the IA where he/she resides forthwith. After the disqualification period has expired, the infringer may apply to the IA to reissue a driving licence, PrDP or operator card to him/her.

#### *3.2.4.2 Section 54 Notice*

If an infringer elects to appear in court, the infringement notice is cancelled and a section 54 notice to appear in court is used by the IA. This notice states the date on which the alleged infringer must appear in court and provides no option for a fine. If the infringer cannot appear in court on the date set, a written application by the infringer to postpone the date of the hearing must be submitted to the court at least seven days before the hearing. The infringer will receive a written notice from the court stating whether the application for postponement has been granted or not. In the event of a successful application, the infringer will receive a notice indicating the next date set by the court for the hearing.

If the application for postponement was unsuccessful and the infringer fails to appear in court, or if the infringer did not submit any application for postponement and he/she does not appear in court on the specific date, a warrant of arrest is not issued (as was the case in the past). The clerk of the court advises the Agency of the infringer's failure to appear in court and the registrar issues an enforcement order.

### **3.3 NEW ZEALAND**

#### **3.3.1 Flow Diagram of Process**

### 3.3.2 Explanation of Process

The Police in conjunction with the Department for Courts (Justice) execute the New Zealand system of adjudication of road traffic offences. This procedure is not an administrative procedure. Offences and crimes in New Zealand are tried through the infringement procedure, summary procedure or the usual longer court procedure for felonies.

#### 3.3.2.1 *Infringement Procedure*

Infringement (minor) offences do not require court proceedings or result in a criminal record. However, if the defendant does not avail him/herself of the opportunity to pay the infringement fee, the infringement procedure is converted to a court procedure.

Procedures for infringements are initiated by the issuance of a “notice of prosecution” by an “informant to the Court”, who is a law enforcement officer. The procedure for “road traffic infringements” is initiated by issuing an infringement notice in terms of the Land Transport Act, 1998 or the Transport Act, 1962. The New Zealand Police and Local Authorities issue infringement notices. Other authorities eg the Civil Aviation Authority and the Ministry of Agriculture and Forestry are also authorized to issue infringement notices, but seemingly only in relation to offences under their specific legislation.

Infringement notices for road traffic offences may be issued for:

- Moving vehicle offences (eg speeding, failure to drive within a lane, unreasonable use of warning device);
- Stationary vehicle offences (eg parking);
- Overloading offences;
- Other offences eg using or permitting the use of an unlicensed vehicle on a public road, making a U-turn on a freeway).

The infringement notice must:

- Contain a summary of the facts of the offence
- Contain the maximum penalty for the offence
- Contain the minimum penalty for the offence if such minimum is specified (as in road traffic cases);
- Indicate whether conviction on the offence may lead to the offender being disqualified from holding a driving licence or may lead to demerit points being recorded against the offender;
- Inform the offender of his/her rights (including his/her right to be acquitted);
- Contain previous convictions, if the “informant” wants the Court to take them into account in sentencing, should the case proceed to Court;
- Contain the full name and signature of the “informed” (Police/traffic officer”).

The infringement notice may be issued –

- By hand (eg when stopped by the Police for speeding, no seat belt, or under age drinking);
- By being placed on a vehicle (eg by the Police for no warrant of fitness, exceeding a parking time limit etc)

- By post (eg traffic camera infringement tickets).

When an infringement notice is issued, the Prosecuting Authority (informant) determines who is liable for the offence. For infringements which involve vehicles the person liable for the infringement ticket may be the –

- Person in charge of the vehicle;
- Registered owner; or
- The person who allegedly committed the offence (ie the person the Police stopped, for example, for not wearing a seatbelt or for under age drinking).

The offender is given 28 days within which to pay the “infringement fee” or request a hearing. If the fee is not paid within the 28 days, the issuing authority (police) issues a reminder to the defendant, after which he/she is given another 28 days to pay.

This reminder contains details of –

- The offence;
- The offender’s rights;
- The total amount of the infringement ticket;
- Where the offender can pay;
- The due date.

The Due Date is 28 days from the date that the Reminder Infringement Notice was issued. By this date the alleged offender must either:

**Admit liability or deny liability**

If the offender **admits** liability he/she has two options:

- Pay to the Prosecuting Authority (informant) in full before the due date
  - This means paid not just posted by the Due date
  - The onus is on the offender to ensure payment has been received
  - If the offender cannot pay in full before the due date discuss with the Prosecuting authority (informant) immediately
- Write to the Prosecuting Authority (informant) admitting liability but requesting a hearing and providing submissions on the penalty.

If the offender **denies** liability he/she –

- Can write to the issuing authority with an explanation seeking waiver of the notice; or
- Can write to the issuing authority denying liability and requesting a court hearing.

A waiver of the notice will only be given in exceptional circumstances, eg if the alleged offender has indicated that he/she was not in charge of the vehicle at the time of the offence. An operator in terms of the “Resource Management Act, 1991” has roughly the same defenses as described in the Namibian Road Traffic and Transport Act, 1999. These defenses boil down to circumstances under which the operator cannot possibly be expected to have control over the driver.

If the alleged offender fails to act on his/her rights (to pose a defence or to request a Court hearing) before the Due Date and the infringement ticket is lodged in Court, he/she loses these rights (for example once a ticket is lodged in Court you can no longer dispute liability for the ticket itself).

If the fee is not paid in the 28 days following the reminder, it becomes a court matter and the procedure described in paragraph 3.3.2.2 must be followed.

3.3.2.2 *Court procedure*

Non Payment of Infringement notice/ No hearing Requested	Deemed to be Court order to pay fine	Notice of Fine	28 days  Final Notice of Fine on day 21
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If the infringement ticket remains unpaid or the alleged offender has not exercised his/her rights, it may be lodged by the Prosecuting Authority (informant) in the District Court for collection and enforcement.

The alleged offender is deemed in terms of section 21(5) and 5(a) of the Summary Proceedings Act, 1957, to have been **ordered by the Court** to pay the fine in question. This section requires that a copy of the Reminder Notice be filed with the Court within 6 or 12 months after expiry of the 28-day period given to the offender by that notice, to pay the fine.

It is now a Court Fine. The cost to the Prosecuting authority (informant) of lodging this unpaid infringement ticket is **\$30**. This charge **is passed on to the alleged offender** as a Court Cost of **\$30** and added to the amount of the original infringement ticket.

Even though it is now a Court fine, the offender does not have a hearing in Court. The Court sends the offender a Notice of Fine that is posted to the address that is provided to the Court by the Prosecuting Authority (informant). This notice includes details of:

- The offence;
- The offender's rights;
- The total amount owing;
- Where the offender can pay;
- The due date for payment.

After receiving the Notice of Fine the offender has 28 days to either:

- Pay the Court fine in full; or
- Apply for an extension of the due date or for payments by instalment; or
- Apply under Section 78B of the Summary Proceedings Act 1957 to "Correct an Irregularity" (have the matter resolved). There are very limited grounds to make an application under this Section. The section pertains only to procedure and does not entitle the offender to apply on any other grounds. The powers of a judge or community magistrate under this section include the



setting aside or the amendment of the infringement notice, the granting of a hearing or a re-hearing and any cost order. A Registrar <sup>10</sup> may only grant a hearing or re-hearing, or allow that another copy of the reminder notice be served on the offender.

If the alleged offender does not take any action within 21 days after his/her fine was lodged in Court, a Final Notice of Fine is issued to him/her. This notice is issued to reach the alleged offender on the 21<sup>st</sup> day after the issue of the Notice of Fine issued by the Court.

If the due date stated in the Notice of Fine has passed and the alleged offender has not –

- Paid the Court fine in full; or
- Applied for an extension of the due date or for payments by instalment; or
- Made an application under Section 78B of the Summary Proceedings Act 1957 to Correct an Irregularity” –

Enforcement action now commences against the alleged offender.

<sup>10</sup> The New Zealand courts system differs from the system that we have in Namibia in that both a Magistrate and a Registrar head the New Zealand Lower Courts. The Registrar is responsible for the management of the court, while the Magistrate is responsible only for acting as the presiding officer in criminal cases, thus restricting him/her to judicial tasks only. The Registrar, on the other hand, performs all administrative and management functions, as well as some quasi-judicial functions such as the issuing of summonses. The system offers a solution to the overburdening of Magistrates in the traditional system (such as the Namibian system), where the Magistrate must preside in Court, apply his/her mind to the cases at hand and perform management and administrative functions at the same time.

## Enforcement Procedure

- The Act attaches different conditions to the exercise of this power by the different judicial officers, depending on their seniority.

### Explanation of process

The first step in the enforcement process is that an enforcement fee of \$100 is added to the Court fine. This is in addition to the Court Costs of \$30, and the original infringement ticket. An infringement ticket for exceeding a parking limit, for example, would be :

Original ticket	\$12.00
Lodgement fee	\$30.00
Enforcement fee	\$100.00
(added after due date)	
<b>Total Outstanding</b>	<b>\$142.00</b>

The court may send a “48 hour notice”, still affording the offender to react within the 48 hours. This notice is essentially a courtesy notice and is not compulsory. After the 48-hour period has expired, the court may take enforcement action in the form of-

- Immobilizing (“clamping”) the motor vehicle used in the offence;
- Sell property of the offender in execution;
- Making an attachment order in connection with the offender’s salary;
- Arresting the offender and taking further court action, such as imposing imprisonment or community service.

Where a bailiff or constable is executing a warrant to seize property, he/she may, instead of seizing any property, immobilize the vehicle (clamp the wheels), pending the payment of the fine. The vehicle may only be immobilized if it is on private property or if it is in a public place, if the bailiff/constable is satisfied that it will not cause inconvenience to the public. If the fine is still not paid 14 days after the immobilization of the vehicle, the vehicle may be seized. Tampering with the clamped vehicle without a reasonable excuse, results in a \$1000 fine.

### 3.3.2.3 *Demerit points*

Only a limited range of driving behaviour attracts demerit points. The demerit points system was initially seen by the New Zealand government as a means to identify drivers that need retraining. Very early on, however, it became a means of punishment. A 100 demerit points accumulated over a period of 2 years leads to a 3 months suspension of a driving licence.

The Director of Land Transport Safety or his/her delegate suspends the licence of a person who has accumulated the determined number of points. A person’s driving licence is, however, not suspended without warning – he/she receives a warning letter at the accumulation of 50 points and a suspension letter after the accumulation of 100 points. The suspension letter must be physically served on the holder of the driving licence to take effect. The person concerned also has the right to appeal to a District Court against the suspension.

Demerit points are accumulated for the following offences:

- Driving a motor vehicle contrary to the conditions of the driving licence (such as without glasses);
- Careless/inconsiderate use of motor vehicle;
- Failure to heed the request to stop by a traffic officer;
- A person younger than 20 driving or attempting to drive while under the influence of alcohol/drug;
- Failure/refusal to wait for the result of a breath screening test/to accompany the traffic officer/to remain for evidential breath testing;
- Failure to keep vehicle to the left of roadway;
- Passing/attempting to pass where insufficient clear road visible;
- Passing/attempting to pass where no-passing line marked;
- Proceeding before way is clear at stop sign;
- Failure to observe give-way rules;
- Failure to observe rules at pedestrian crossing;
- Failure to stop and remain stopped at school patrol sign;

- Driving in a lane at such a speed as to be unable to stop in the length of lane visible;
- Driving at such a speed as to be unable to stop in half the clear distance ahead;
- Driving a motor vehicle behind another motor vehicle and being unable to stop short of the vehicle ahead;
- Exceeding the speed limit (a scale is imposed in accordance with the percentage with which the speed limit is exceeded).

The demerit points system runs concurrently with the fines system.

#### 3.3.2.4 *Mandatory 28-day suspension of driving licence*

If an offender is caught committing a serious driving offence the Police can suspend his/her licence, effective immediately, for 28 days.

This is called roadside licence suspension, but it can happen anywhere – at the roadside after, at a Police station or wherever the Police find the offender after they receive confirmation that his/her alcohol level was double the legal limit. Roadside licence suspension is an instant and severe penalty for driving in a way that puts the lives of other road users at risk.

The offences to which the mandatory roadside suspension apply are –

- Drink-driving at more than double the legal alcohol limit;
- Speeding at more than 50km/h above any applicable speed limit (does not apply to speed camera offences); or
- Failing or refusing to supply a blood sample to be tested for excess blood alcohol.

The Police issue a suspension notice immediately upon stopping or finding the alleged offender, stating that the suspension takes immediate effect. The driving licence is taken immediately and the driver is not even allowed to drive home.

The offender may appeal to the Land Transport Safety Authority against the 28-day suspension on the following grounds:

- The person whose licence was suspended was not the driver of the vehicle at the time of the offence; or
- The Police officer did not have reasonable grounds to believe the offence was committed; or
- The Police officer did not give the driver whose licence was suspended a notice that complied with the prescribed requirements.

An appeal on the grounds that roadside licence suspension will cause undue hardship will not be accepted. In other words, a person whose licence was suspended under the above circumstances may not appeal on the grounds eg that he/she needs to drive to work etc. If the appeal to the Land Transport Safety Authority is unsuccessful, the affected person may make a further appeal to a District Court. The appeal application must be in the form of a statutory declaration, which means a Justice of the Peace, solicitor, employee of the LTSA or any other person authorized to take a statutory declaration, must witness it.

**The driving licence is in the above cases suspended in addition to the person being accused in a court of law. If the appeal is granted, the person may have his/her driving licence back.**

Some States in the United States of America have also implemented the 28-day mandatory suspension. Reports from the USA state that in States where the suspension is stayed while the holder of the driving licence appeals, around 80% of all people whose licences are suspended in this manner appeal against the suspension. In other States, where the suspension is not stayed while the holder of the suspended driving licence appeals, around 20% of the people affected appeal.

### *3.3.2.5 General Observations with regard to the New Zealand procedure*

- The system implemented by New Zealand to adjudicate road traffic offences is essentially not decriminalized, but the procedure is to a great extent an administrative procedure. The offender is, as is the case in South Africa, given a choice to defend him/herself in Court. The legislation, however, makes the granting of a hearing very difficult for the defendant. The defendant, on receiving an infringement notice, may write to the issuing authority (the Police in New Zealand), stating his/her defence and asking for a hearing. The Police, as a first “stop” adjudicate the request and will either file the hearing in Court or remove the infringement. This adjudication is done in accordance with well-developed principles contained in a guideline document that is made available to the officers concerned.
- Only minor offences are subject to the infringement procedure. The major or more serious offences remain subject to the normal court procedure.
- Demerit points are attached only to driver behaviour offences.
- The adjudication of road traffic offences form part of a strategic management plan implemented by the Police.

## **3.4 SINGAPORE**

### 3.4.2 Discussion

#### 3.4.2.1 *Background*

The Singapore road traffic offences adjudication system is part of a holistic safety and security management plan executed by the Singapore Police, in co-operation with the Ministry for Justice and the Land Transport Authority. The Land Transport Authority is responsible for the development of policy, while the police are responsible for the enforcement of the policy. The Land Transport Authority in co-operation with privatized vehicle testing centres enforces vehicle standards. Driver training and standards, on the other hand are functions of the Police in co-operation with the private sector.

The fundamental principles of prosecution and adjudication of offences in Singapore are the same as in Namibia. Minor offences may be compounded (as in terms of section 341 of the Namibian Criminal Procedure Act, 1977), while major offences and minor offences where the compounding fee or admission of guilt fine has not been paid are still adjudicated by the courts.

A few adjustments of the criminal procedure, together with the computerization of both the courts and the police systems, however, ensure the effective enforcement of road traffic offences. The enthusiasm and dedication of the traffic police in Singapore, as well as their knowledge of their subject are major factors contributing to a successful law enforcement effort. Furthermore, the Island is relatively small and is almost covered by traffic cameras that are monitored from a central point. As soon as a traffic emergency develops, the relevant reaction unit is dispatched from the central monitoring room. There are at any given time between 30 and 40 personnel monitoring the video screens photographed by the cameras. In addition, drivers undergo extensive training before they are allowed on the road.

During 1998, the fatality rate in Singapore as a result of motor vehicle accidents was 3.2 per 10 000 vehicles. If compared to the Namibian fatality rate of 16.48 per 10 000 vehicles for the same year, we must take cognizance of the fact that our systems and law enforcement are lacking.

The adjudication system and the driver improvement scheme (DIPS) will be discussed below.

#### 3.4.2.2 *Driver behaviour*

The common driver behaviour-type of offences are as follows:

- **Parking offences**
  - Parking opposite continuous white line
  - Parking at unbroken double yellow lines
  - Parking on the footway of a public road
  - Parking in a manner as to cause unnecessary obstruction
  - Parking at unbroken single yellow line
  - Parking within 9 metres of a bus stop
  - Parking opposite continuous double white lines
  - Parking within 6 metres of a junction

- **Moving Offences**

- Speeding
- Failing to conform to traffic red light signal
- Crossing double white lines
- Driving or stopping on shoulder of an expressway
- Driving in a bus lane during prohibited hours

### 3.4.2.3 *The adjudication system*

The Traffic Police are empowered in terms of the Road Traffic Act (Chapter 276) to issue “traffic tickets” instead of summonses for which the approval of the court is needed. The following types of traffic tickets/notices are issued:

- Notice of a parking offence (two types)
- Notice of traffic offence
- Request for driver’s particulars
- Notice to attend court

#### 3.4.2.3.1 *Parking Offences without demerit points*

- **Notice of a Parking Offence**

This is a traffic summons placed on the vehicle or issued to the motorist on the spot. With this notice, the motorist will be given 28 days (from the date of issue of the notice) to pay a composition fine. If payment is not made within the 28 days, the motorist receives a NP 403 (Notice of Traffic Offence) after which he/she is given another 28 days to make the fine payment). **If he/she fails to do so, he/she may still pay a court fine<sup>11</sup> without having to attend court. Such court fine payment can only be made through ATOMS<sup>12</sup> and if the offender has never been convicted of a traffic offence in a Singapore Court. Payment of the court fine is allowed till 12 noon on the court date. If payment is not made, the offender must attend court on the court date. Failure to attend Court results in a Warrant of Arrest issued against the offender.**

<sup>11</sup> Admission of guilt

<sup>12</sup> The Automated Traffic Offence Management System, is a service jointly provided by the Subordinate Courts, Traffic Police Department, Land Transport Authority, Housing and Development Board, Urban Redevelopment Authority and Network for Electronics transfer. The ATOMS allows users to settle their traffic tickets (and certain other accounts) through electronic payment. In the case of a traffic ticket, a guilty plea is entered automatically. This amounts to the admission of guilt fine known to us.



This notice is similar to the notice issued in Namibia in terms of section 341 of the Criminal Procedure Act, 1977, giving the offender the opportunity to compound the offence and prevent court prosecution.

- **NP413 (Notice of a Parking Offence)**

This is a notice for a parking offence placed on the vehicle or issued to the motorist on the spot. This notice is issued together with the Notice of Traffic Offence, which is mailed to the offender. Payment of the fine in terms of this notice may only be made once the Notice of Traffic Offence has been received by the offender.

- **NP403 (Notice of Traffic Offence)**

Upon receipt of this traffic offence notice, the offender is given 28 days (from the date of issue of the notice) to pay the composition fine. If the offender fails to do so, the offender may still pay a court fine<sup>13</sup> without having to attend court under the same conditions as above.

#### 3.4.2.3.2 *Parking Offences **with** Demerit Points*

- **NP143B (Request for Driver's Particulars)**

This is a notice requesting for the driver's particulars that is sent to the owner's place of abode/business. Upon receipt of the NP143B, the owner is required to furnish Traffic Police with the driver's full particulars within 7 days from the date of issue of the notice. Upon receipt of the driver's full particulars, Traffic Police will send a NP 403 (Notice of Traffic Offence) to the driver concerned. If the owner fails to supply traffic Police with the driver's particulars or fails to supply the particulars within the required period, he/s he receives a Notice of Traffic Offence for Failure to Furnish Driver's particulars. Upon receipt of this notice, he/she is given another 28 days to furnish the driver's particulars and is also required to pay the fine for the "Failure to Furnish" offence.

If the driver's particulars are furnished, Traffic Police issue a NP403 to the driver concerned. However, if the owner still fails to furnish Traffic Police with the driver's particulars, he/she is issued with another NMP143B requesting him/her to furnish the driver's particulars. If he/she still fails to furnish or fail to furnish within the period required, another NP403 for "Failure to Furnish" offence will be issued to the owner. This process is to be repeated until the owner has furnished the driver's particulars. (Driver's particulars are still required to be furnished to Traffic Police, even though payment has been made for the 'Failure to Furnish' offence).

<sup>13</sup> Admission of guilt.

Upon receipt of the NP403 for 'Failure to Furnish' offence, the owner is given 28 days to pay a composition fine. If he/she fails to do so, he/she may still pay a court fine without having to attend court. (See par 3.4.2.3.1)

- **NP413 (notice of a Parking Offence)**

This is a notice for a parking offence placed on the vehicle or issued to the driver on the spot, and is issued together with a notice of traffic offence, which is mailed to the owner/offender. Payment may only be made upon receipt of the NP403.

- **NP403 (Notice of Traffic Offence)**

Upon receipt of this traffic offence notice, the offender is given 28 days (from the date of issue of the notice) to pay the composition fine. If he/she fails to do so, he/she may still pay a court fine\* without having to attend court. (See par 3.4.2.3.1).

#### *3.4.2.3.3 Moving Offences without Demerit Points*

- **NP402S (Notice of Traffic Offence)**

The Police Officer booking the offender for the offence issues him/her on the spot with a NP 402S (Notice of Traffic Offence). Upon receipt of this notice, the offender can choose to have the offence compounded by paying a composition fine within 28 days from the date of issue of the notice. If he/she fails to do so, he/she may still pay a court fine without having to attend court. (See par 3.4.2.3.1).

- **NP403 (Notice of Traffic Offence)**

If a traffic offence has been committed and no police officer has stopped and booked the offender on the spot, he/she could still receive a NP 403 (Notice of Traffic Offence) by post for the offence that has been committed. Upon receipt of the said notice, the offender is given 28 days to pay a composition fine. If he/she fails to do so, he/she may still pay a court fine without having to attend court. (See par 3.4.2.3.1)

#### *3.4.2.3.4 Moving Offences with Demerit Points*

- **NP 402S (Notice of Traffic Offence)**

The Police Officer booking the offender for the offence issues him/her on the spot with a NP402S (Notice of Traffic offence). Upon receipt of this notice, the offender can choose to have the offence compounded by paying a composition fine within 28 days from the date of issue of the notice. If he/she fails to do so, he/she may still pay a court fine without having to attend court. (See par 3.4.2.3.1).

- **NP403 (Notice of Traffic Offence)**

If a person has committed a traffic offence and no police officer has stopped and booked him/her on the spot, he/she could still receive a NP 403 (Notice of Traffic Offence) by post for the offence that he/she has committed. Upon receipt of the said notice, the offender is given 28 days to pay a composition fine. If you fail to do so, he/she may still pay a court fine without having to attend court. Failure to attend Court will result in a Warrant of Arrest issued against the offender.

However, if a person has committed a traffic offence where the case has to be processed before a Notice of Traffic Offence can be issued to the offender (example, offence of careless driving where a description of the offence has to be stated on the Notice), the officer who stops the offender informs him/her of the offence and that a Notice of Traffic Offence will be sent to him/her by post.

- **NP 143B (Request for Driver's Particulars)**

This procedure is exactly the same as for the parking offences, and can also ultimately lead to a warrant of arrest being issued to the owner.

- **NP 404 (Notice to Attend Court)**

This Notice to Attend Court is issued to an offender who has committed a non-compoundable offence and court attendance is required, eg speeding offence for which the speed that the vehicle has exceeded is more than 40 kmph of the speed limit of the road or vehicle, or offence of using mobile telephone whilst driving. This notice may also be issued for compoundable cases where offer of composition is not granted.

#### 3.4.2.4 *The Driver Improvement Points System (DIPS)*

##### 3.4.2.4.1 *Background*

The Road Traffic (Driver Improvement Points System) is designed to identify high-risk motorists or habitual offenders and to stop them from driving for a specified period of time. The system also requires recalcitrant offenders suspended for one year or longer to re-sit and pass a driving test before they are allowed to drive again.

From 1 Nov 1999, the Traffic Police extended the "Driver Improvement Points System (DIPS)" to include foreign driving licence holders. The DIPS was previously applicable to only Singapore driving licence holders. With the extension, all drivers will be given demerit points when they commit certain traffic offences. The Minister of Home Affairs stated in Parliament in the introduction speech to the Amendment Bill to the Road Traffic Act that introduced this measure, that during 1998, 25% of fatalities on Singapore roads were foreigners.

The DIPS forms an integral part of a driver training and quality control scheme. Drivers are eg not allowed on the road unless they have undergone the prescribed training at the driving centers operated by the Police and a private sector in a joint venture. Drivers are trained in all aspects of driving, namely road traffic signs, driving skills, the psychology of driving and the road traffic laws. The driver licensing system is a "ladder system". A first-time driver must eg start with a light motor vehicle or a light motorcycle before he/she is allowed to progress to the heavier classes. The issue of a licence is also dependent on the behaviour of the driver as reflected by the points system.

##### 3.4.2.4.2 *General Rules of the DIPS*

The DIPS is authorized by the Road Traffic and Transport Act, which also authorizes the deputy Commissioner of Police to suspend/ revoke the driving licence when the determined number of points have been accumulated. If certain offences are

committed, the Court is forced to suspend a driving licence, and may revoke the licence on second and third offences of the same nature. These offences include drunken driving, reckless driving and hit and run accidents, as well as refusal to give a blood sample for alcohol testing.

#### *3.4.2.4.3 Periods of suspension*

The DIPS allows a driver to accumulate 24 points within a 24-month period before he/she becomes liable for suspension. If a driver has been suspended before, he/she is only allowed to accumulate less than 12 points within 12 months. A first time suspension lasts three months. Subsequent suspensions can range up to three years.

- If a person, who has never been suspended, has accumulated 12 or more demerit points, the Police send him/her a notice listing all the offences and demerit points that he/she has accumulated.
- A person with a previous suspension record will be given a notice once he/she accumulates 6 demerit points. This notice serves as a warning and also to remind the person of his/her demerit points position.
- Where the suspension period lasts a year or longer, the motorist will have his licence revoked and will have to re-sit and pass the tests in order to be allowed to drive again.
- A new (first time) driver's licence is revoked upon accumulation of 13 or more demerit points within a period of 12 months from the date of the grant of the licence.
- A person is not allowed to take a test of competence to drive any class of vehicle –
  - During the period of suspension of a licence, whether for the same or for a different class of vehicle held by him;
  - During the period for which he has been disqualified from holding or obtaining a licence, whether for the same or for a different class of vehicle; or
  - Within the period of one year from the date of the revocation of a licence, whether for the same or for a different class of vehicle held by him.
- A motorist who maintains a 12-month free of offences with demerit points from the date of last offence, has all his previous points cancelled from his record.
- Those who maintain a 24-month period free of offences from the date of expiry of the last suspension, which carry demerit points, also have all previous suspensions cancelled from their records.
- A foreign driver who accumulates 23 demerit points or more within a period of 24 months is liable for a Prohibition Order, which will disallow him/her to drive in Singapore. The duration for the first time prohibition is 3 months and subsequent prohibitions can be up to 3 years.

#### *3.4.2.4.4 Categories of offences and the demerit points attached to them*

There are 8 categories of offences that carry demerit points. They are grouped under 3, 4, 6, 8, 9, 12, 18 and 24 demerit points according to the severity of offences:

- **3 Demerit Points**

- Disobeying traffic direction of Police Officer
- Carrying excess pillion or carrying pillion not sitting astride
- Riders failing to wear or wear insecurely on his head a protective helmet
- Driver failing to wear a seat belt
- Driver failing to ensure that front/rear seat passenger wears a seat belt
- Allowing a child below 8 years of age who is a front/rear passenger to be secured with an unapproved child restraint
- Using a motor vehicle where a child below 8 years of age, who is a front/rear passenger is not properly secured by an approved child restraint when there is seat belt available for the use of such passenger
- Parking within a Demerit Points No Parking Zone
- Stopping within a Demerit Points No Stopping Zone
- Parking abreast of another vehicle
- Parking within a pedestrian crossing
- Stopping in a zebra-controlled area
- Carrying passengers on goods vehicle without a permit
- Conveying load not properly secured
- Using tyre with ply or cord carcass exposed

Including a fine:

- Light vehicle (weight unladen 3500 kg and below): S\$120.00
- Heavy vehicle (weight unladen exceeds 2500 kg): S\$150.00

- **4 Demerit Points**

- Exceeding speed limit of vehicle up to 20km/h.
- Exceeding speed limit of the road up to 20km/h.
- Failing to give way to oncoming traffic at controlled junction.
- Failing to give way at uncontrolled junction.
- Failing to give way at junction.
- Failing to give way at roundabout.
- Crossing double white lines.
- Crossing road divider.
- Hindering flow of traffic.
- Failing to give way to ambulance or fire brigade or police vehicle.
- Driving while carrying load on a motor vehicle in a dangerous manner.
- Driving or leaving a vehicle in a bus lane during restricted hours.
- Stopping or allowing vehicle to remain at rest on shoulder of an expressway.
- Stopping or remaining at rest on the carriageway of an expressway.
- Forming up incorrectly when turning left or right.

Including a fine:

- Light vehicle (weight unladen 2500 kg and below): S\$130.00
- Heavy vehicle (weight unladen exceeds 2500 kg): S\$160.00

- **6 Demerit Points**

- Driving or riding against the flow of traffic
- Driving on a shoulder of an expressway.
- Load falling off the vehicle.

- Exceeding speed limit of the road by more than 20km/h up to 30km/h.
- Exceeding speed limit for vehicle by more than 20km/h up to 30km/h.
- Offences committed by motorists at a pedestrian crossing.
- Failing to give way to pedestrian at pedestrian crossing.
- Unable to stop your vehicle before reaching a pedestrian crossing.
- Failing to allow free and uninterrupted passage to a pedestrian.
- Failing to give way to a pedestrian at a controlled intersection.
- Careless driving.
- Carrying passengers on a goods vehicle in a dangerous manner.
- Carrying passengers on a motor vehicle or trailer in a dangerous manner.
- Reversing unnecessarily along an expressway.
- Including a fine:
  - Light vehicle (weight unladen 2500 kg and below): S\$150.00
  - Heavy vehicle (weight unladen exceeds 2500 kg): S\$180.00
- **8 Demerit Points**
  - Exceeding speed limit for vehicle by more than 30km/h up to 40km/h.
  - Exceeding the speed limit of the road by more than 30km/h up to 40km/h.
  - Including a fine:
    - Light vehicle (weight unladen 2500 kg and below): S\$170.00
    - Heavy vehicle (weight unladen exceeds 2500 kg): S\$200.00
- **9 Demerit Points**
  - Driving without due care or reasonable consideration for other road users.
  - Including a fine:
    - Light vehicle (weight unladen 2500 kg and below): S\$170.00
    - Heavy vehicle (weight unladen exceeds 2500 kg): S\$200.00
- **12 Demerit Points**
  - Exceeding speed limit for vehicle by more than 40km/h up to 50km/h.
  - Exceeding the speed limit of the road by more than 40km/h up to 50km/h.
  - Above offenders are prosecuted in court.***
  - Failing to conform to traffic red light signals.
  - Including a fine:
    - Light vehicle (weight unladen 2500 kg and below): S\$200.00
    - Heavy vehicle (weight unladen exceeds 2500 kg): S\$230.00
    - Use of mobile telephone whilst driving.
  - Including a fine:
    - 1<sup>st</sup> time offender – fine not exceeding \$1000 or jail sentence of up to 6 months or both.
    - 2<sup>nd</sup> or subsequent conviction – fine not exceeding \$2000 or jail sentence of up to 12 months or both.
    - **Offender is prosecuted in Court, may face disqualification of licence and forfeiture of hand phone (cellular phone).**
- **18 Demerit Points**
  - Exceeding speed limit for vehicle by more than 50 km/h up to 60 km/h.
  - Exceeding speed limit of the road by more than 50 km/h up to 60 km/h.
  - Offender is prosecuted in Court.**

- **24 Demerit Points**

- Exceeding speed limit for vehicle by more than 60 km/h.
- Exceeding speed limit of the road by more than 60 km/h.
- Reckless or dangerous driving.

**Offender is prosecuted in Court.**

#### 3.4.2.4.5 Fine levels

It was noted that Singapore fines are set at a level which is affordable to vehicle owners. The level of fines are set in relation to the people's income levels, as well as in relation to legal principles. The deterrence lies more in the fact that one can lose one's licence or the use of one's vehicle if found guilty of the offence. This deterrent is enhanced by the fact that people know that law enforcement is effective. It is a fact that one will be caught if one has transgressed. It is further a fact that if one does not pay one's initial fine and the Court finds one guilty, one will be fined double or three times the initial fine.

Fines are also fixed between levels. A minimum and a maximum fine is prescribed by the legislation in relation to an offence.

The following table is an example of the fines prescribed:

<b>Offer to compound</b>	<b>Court fine imposed if you use ATOMS</b>	<b>Court fine if you go to Court</b>
Not exceeding S\$100	S\$200.00	S\$400.00 to S\$1000.00
More than S\$100 but not exceeding S\$200	S\$300.00	S\$500.00 to S\$1000.00
More than S\$200 but not exceeding S\$300	S\$400.00	S\$600.00 to S\$1000.00
More than S\$300 but not exceeding S\$400	S\$500.00	S\$700.00 to S\$1000.00
More than S\$400 but not exceeding S\$500	S\$600.00	S\$800.00 to S\$1000.00

The increase in fines as described above, provides for the cost of the Court procedure. (South Africa and New Zealand adopted the same principle. In South Africa discount is given on early payment and in New Zealand costs are added to the fine in similar fashion as our civil debt collection procedure).

#### 3.4.2.4.6 Incentive Scheme for Good Drivers

The Singapore Government and the Insurance industry negotiated an incentive scheme where drivers with clean records receive a discount on their insurance premiums. The Singapore vehicle owners must have third party insurance – this is a prerequisite for vehicle ownership and non-compliance is an offence. There are 29 participating insurance companies.

Motorists with a clean driving record for three years enjoy a 5% discount over and above the usual No-Claim Bonus when they renew their insurance policy. They must not have made any claims on their vehicle's insurance for the past three years.

Owners of all privately owned vehicles, including buses and motorcycles, are eligible for the incentive scheme.

#### *3.4.2.5 Vehicle Quality Control*

Singapore introduced a total vehicle quality control system that proved to be very effective. The Island allows only the number of vehicles onto the island that is optimum in relation to the available infrastructure and safety. This means that before a person is allowed to buy a vehicle, he/she must first obtain a certificate of entitlement, authorizing the acquisition. These are very expensive. While the purpose with restricting the number of vehicles on the Island is transport planning, infrastructure management and safety management, the system causes vehicle ownership to become a desirable exclusivity. People do not risk losing their entitlement to own a vehicle or to drive the vehicle they own by transgressing the law.

The restricted number of vehicles is maintained by increasing vehicle licences in accordance with the age of the vehicle. It is thus not cost-effective to own an older vehicle that is not well-maintained. At a certain point it is not cost effective at all to own the older vehicle. The programme to restrict results in a vehicle population that is relatively new and is well-maintained. ??

The quality of vehicles is controlled through:

- **Periodic** roadworthiness testing for **all** vehicles.
- Prohibiting the use of a vehicle that does not comply with the roadworthiness standards;
- On-road law enforcement in addition to periodic testing.

The prosecution of vehicle quality does not carry demerit points, but relates to vehicle licensing and is enforced by the Court. In other words, a driving licence may not be suspended because of a vehicle being in an unroadworthy condition, but the vehicle licence will.

#### *3.4.2.6 Institutional arrangements*

The institutions responsible for the adjudication of road traffic offences in Singapore are:

- The Land Transport Authority (within the Ministry of Transport);
- The Traffic Police (within the Ministry of Home Affairs);
- The Lower Courts (within the Ministry of Justice).

These institutions are closely co-ordinated and very well managed. The Island adheres to a performance-based system of integrated transportation planning, including clearly defined safety goals.

The adjudication of road traffic offences is but a part of the integrated system. Prosecution in respect of a traffic offence will eg be initiated by the Police, investigated by the Land Transport Authority and finally adjudicated by the Courts, all of this being supported by a computer supported management system.

#### *3.4.2.7 General Observations of the Singapore Procedure*



The salient feature of the Singapore adjudication system is that it forms part of a well-managed general crime management system of which traffic management is an integral part. To a certain extent, law enforcement almost seems to be draconian. Given Singapore's history, this may have become a necessity and certainly have a positive effect regarding road traffic safety. Even with successful law enforcement and adjudication, there are still cases where people either do not pay their traffic fines or skip bail once they have been arrested.

The Singapore system has not been decriminalized, neither has a separate institution been established with the purpose of adjudicating road traffic offences. The well known British criminal procedure has been enhanced by a driver improvement points system and a vehicle quality control system, supported by effective management based on performance measurement.

Oversimplified, compliance is obtained through friendly assurance that if a fine is not immediately paid, the offender can be sure of a court procedure following, resulting in a fine two or three times the amount of the original fine, or even imprisonment, if found guilty. In the case of driver behaviour the fine is coupled with demerit points and in the case of vehicle quality deficiencies, with the suspension of the use of the vehicle.

## **PART 4 : FUNDAMENTALS AND THE WAY FORWARD**

### **4.1 EXTRACTION OF FUNDAMENTAL PRINCIPLES**

From the status quo study and the international comparison of legal principles and adjudication systems, the following fundamental principles were extracted in accordance with which it is proposed that the current Namibian system of adjudication is adapted.

#### **4.1.1 Constitutionality and fundamental principles of the criminal law**

The following fundamental principles of the criminal law are entrenched in the Constitution:

- The right to a **fair** hearing;
- The right to a **public** hearing;
- The right to be **present** at the hearing;
- The right to **legal representation**.

The fact that these rights are entrenched in the Constitution, elevate them to a non-negotiable status. The fundamental rights of any person may in terms of the Constitution be encroached on, but within the framework of Article 22 thereof. The criminal procedure, in accepting composition and admission of guilt fines, encroaches on these rights. The fact that the encroachment is of general application and that it is in the public interest assures that the procedure falls within the ambit of Article 22 of the Constitution. Deviation from the current procedure is thus not possible. With the Constitution being the supreme law providing the pillars of democracy, it is not acceptable to provide even a small window of opportunity to deprive people of their fundamental rights.

It has to be concluded that the current criminal procedural system may be enhanced through more efficient administrative support, but punishment for offences may never be imposed without affording the accused the opportunity to hear the charge against him/her in public and to defend him/herself against the charge with, or if he/she so chooses, without legal representation.

#### **4.1.2 Nature of sanction/punishment**

Punishment in modern criminal law is a penalty inflicted by the State upon a person for committing a criminal offence. This punishment consists of various actions, for example, imposition of a fine, imprisonment, community service, reprimand, death sentence, etc. Punishment by the State for a criminal offence is a means of protecting the laws from abuse by individual members of the society. The purpose of punishment is not only to punish an offender for wrongdoing but also to serve as a deterrent, with the degree of penalty adjusted to reflect the nature of the crime. Proponents of legal punishment stress its value as a sobering deterrent to those criminally inclined and, in the case of imprisonment for its own sake, as a means for protecting society from chronic or dangerous lawbreakers.

Applied to sanctions for road traffic offences, the punishment must be seen in relation to the transport and traffic environment, which entails more than road traffic alone. The purpose of creating a road traffic offence should always be the achievement of a safety goal or the protection of infrastructure. The cost (financial and other) to the country in relation to infrastructure, road deaths and injuries, as well as accident damage, must drive the determination of the level of fines, or the intensity of other measures, such as the period of imprisonment or licence suspension. While the periods of imprisonment and the driving licence suspension are on par with international best practice, fines determined in terms of the Road Traffic and Transport Act, 1999, are too low to deter people from committing offences. The latter, coupled with inefficient and unco-ordinated prosecution of traffic offences, result in the public as well as prosecution authorities regarding road traffic offences as petty. If the administrators of the substantive road traffic laws cannot substantiate the offences they create and the fines they impose through planning and pre-set goals, why would the public and prosecuting authorities respect the laws and the punishment?

#### **4.1.3 Prosecution must be certain to be successful**

For prosecution to be successful in achieving the goals set in terms of infrastructure protection and safety it must be certain. A road user must know for certain that an offence will be prosecuted. The probability of the offence being detected must be high. This begs efficient on-road law enforcement, which in turn impacts heavily on manpower and infrastructure, both which pose problems in the Namibian context. These problems, however, are not insurmountable. The personnel we interviewed (with very few exceptions) show enthusiasm for the work at hand and will with the correct support in a strategically managed environment perform much better than is currently the case.

Even if road users cannot be continuously monitored as in Singapore, once an offence is detected, prosecution should follow as a matter of certainty. In the same breath, prosecution should not be unreasonable. In addition, law enforcement should be done in accordance with a strategically managed programme and should not be restricted to office hours. For example in South Africa during the early 1990's, the most serious of overloading offences were committed at night and the traffic officers did not work night shifts during that period.

#### **4.1.4 Adjudication as part of an overall Strategic Traffic Management Programme**

The importance of effective transportation planning and management has been recognised by Government through the establishment of the Roads Authority, the Road Fund Administration, the intended establishment of the Road Safety Agency and the stated purpose of the Directorate Planning and Transportation Management <sup>14</sup>. All the institutions concerned are subject to performance based management plans that are under the control of the Minister of Works, Transport and Communication and in the case of the Road Fund Administration, of the Minister of Finance.

14 Annual Report of the Ministry of Works, Transport and Communication, 2000-2001

The infrastructure created by Government for the management and funding of road traffic and transport lends itself perfectly to the co-ordination of the prosecution and adjudication of road traffic offences. While the fact that other role-players such as Nampol and the Ministry of Justice are involved, complicates the issue somewhat, the study showed that the parties communicate with each other in a spirit of co-operation. If this communication can be improved and supported by expressing the common goal through performance statements and continuous management, success will follow.

## **4.2 SYNTHESIZING FUNDAMENTAL PRINCIPLES TOWARDS SUCCESSFUL PROSECUTION AND ADJUDICATION OF ROAD TRAFFIC OFFENCES**

### **4.2.1 Strategic Management**

MWTC's goal to enhance the overall quality of road traffic by promoting acceptable levels of safety, order, discipline and mobility on the roads closely relates to the functions of managing the road network and funding the road network, law enforcement and information systems, which are functions of the Roads Authority and the Road Fund Administration.

The vehicle population of Namibia totals 168 000. The driver population accordingly is estimated at between 200 000 and 250 000. This is a very small vehicle and driver population that should not pose insurmountable difficulties in being effectively controlled. While Namibia does not have the resources available to acquire all the advanced equipment that e.g. Singapore has, we are in a position to substantially improve on the execution of only 0,4% warrants of arrest (even in a remote area such as the Oshakati Magisterial District). Furthermore, the road death rate of 16.48 per 10 000 vehicles per annum, is at a cost in excess of N\$100 million to the country. **Road traffic accidents (and therefore deaths and injuries) are directly linked to road traffic offences.**<sup>15</sup> If the cost of injuries is included in the calculations, the amount exceeds N\$200 million.

It is possible to co-ordinate the prosecution and adjudication exercise with the strategic management plans of all institutions involved if effective traffic safety strategies are developed concomitantly with the management plans of the Roads Authority, the Road Traffic Safety Agency and the Road Fund Administration. This entails that the Lower Courts, the Nampol Traffic Unit, the Road Transport Inspectorate of the Roads Authority and the Municipal Traffic Units must be involved in the development of a strategic law enforcement management plan for Namibia.<sup>16</sup>

Such a strategic law enforcement management plan must have as its goal the reduction of injuries and death as a result of road traffic accidents and the protection of infrastructure. Such an exercise must be co-ordinated under the auspices of the Minister of Transport, Works and Communication, (MWTC) whether from within MWTC or from within one of the Agencies. First choice would be MWTC's Directorate Transportation Policy and Regulations, while the to be established Road Safety Agency's objects are best suitable to performing this function.

<sup>15</sup> The Economics of Road Traffic Safety by Jorgun Karthum Hansun, Africa Transport Technical Note No. 11, Dec 1997 (World Bank)

<sup>16</sup> The term "law enforcement" in this sense and further on in this document entails the actions taken by traffic officers and transport inspectors to identify offenders, the prosecution of those offenders and the adjudication of the prosecutions.

The Law Enforcement Agencies and the Lower Courts should not be expected to lose their autonomy or independence, though. For this reason, a joint executive body should be established with the purpose of co-ordinating the law enforcement effort. The Directorate of Transportation – Policy and Regulations – or the Road Safety Agency should perform the day-to-day management of the strategic law enforcement management plan.

#### **4.2.2 Prerequisites for a strategic law enforcement management plan**

To successfully implement any strategic law enforcement management plan, the executive body should be able to –

- Identify the offender;
- Identify the vehicle with which the offence is committed;
- Identify habitual offenders;
- Determine the relation between offences and road traffic accidents;
- Quantify the cost of road traffic accidents to the country;
- Quantify safety goals in relation to savings to the economy;
- Identify roads or places in/on a road that pose a safety risk;
- Identify the part of the maintenance cost to the road network that is caused by offenders;
- Determine the optimum level of expenditure in relation to road traffic law enforcement.

##### *4.2.2.1 Identification of the offender*

Although there are offences that are committed by owners and operators of vehicles, most road traffic offences are committed by drivers. To be able to identify an offender, a register of drivers is necessary. Namibia is in the process of implementing a central register of drivers. The Namibian Traffic Information System will in due course record the particulars of all the licensed drivers in Namibia onto a central computerised register. The new driving licence issued to the driver employs modern technology to enable law enforcement officers to verify the authenticity of the driving licence as well as to determine the status of any outstanding prosecutions against the driver at the roadside.

##### *4.2.2.2 Identification of the vehicle with which the offence is committed*

The vehicle register of the Namibian Traffic Information System is in full operation and enables the identification of every vehicle registered in Namibia. The vehicles not registered on the system are estimated at about 2000. These include vehicles exempt from registration.

##### *4.2.2.3 Identification of habitual offenders*

To identify habitual offenders, the executive body should be able to record a finding of guilty against the particulars of a driver on the register of drivers, in other words, an offences register must be established.

##### *4.2.2.4 Quantification of the cost of road traffic accidents to the country; Quantification of safety goals in relation to savings to the economy; Identification of safety risks in the road network; Determination of the relation between offences and road traffic accidents*

To set safety goals, it is necessary to identify the factors endangering that safety and to measure it. Road traffic accidents are the most obvious danger and some effort is made to curb its occurrence. Less obvious are factors such as road design and the relation between offences, driving ability and accidents. To be able to determine all of these, proper accident statistics are needed, which can be related to a geographical information system as contained in the road network definition of the road management system of the Roads Authority and the driver register.

The National Road Safety Council has already requested proposals in this regard. Once such a system is in place, the system can be used in conjunction with the offence record to determine the relation between road traffic offences and road traffic accidents.

#### *4.2.2.5 Identification of the part of the maintenance cost to the road network that is caused by offenders*

The Roads Authority is already in a position to determine the cost of maintenance necessitated by the overloading of motor vehicles. This cost should be related to the determination of the level of fines and factored into the determination of the level of overload fines.

#### *4.2.2.6 Determination of the optimum level of expenditure in relation to road traffic law enforcement*

The Road Fund Administration Act, 1999, provides for the Road Fund Administration to determine the maximum amount of expenditure that may be incurred in relation to its contribution to a Traffic Information System, the defraying of the cost of law enforcement and adjudication of traffic offences. In order to perform this duty efficiently, the RFA must know what the goals in relation to these issues are. These goals must be quantified and thereafter, the maximum expenditure must be determined in relation to the national goals as well as the available funds.

### **4.3 SUPPORT**

A management programme such as required for the efficient management of road traffic could best be achieved if supported by legislation and a proper information and computerized management system. Such a system should –

- Provide access to all role-players;
- Contain a goal management module enabling the setting and monitoring of goals on all levels (eg from the percentage reduction in the road death rate to the performance of a specific traffic officer);
- Contain a database of accident information;
- Relate to the road network definition of the road management system of the Roads Authority;
- Be able to support weigh bridge activities;
- Contain an offence module that is able to support the prosecution and adjudication process from initiation to finalisation;
- Be able to plan and monitor on-road law enforcement activities;

- Be able to generate reports based on the data contained in the system for the purpose of developing and monitoring the traffic law enforcement management plan;
- Provide for different levels of access by different institutions;
- Be able to interface with the Namibian Traffic Information System.

Following a special meeting of the Road Traffic and Related Matters Consultative Committee on 27 November 2001, the Permanent Secretary of MWTC made guideline recommendations to the RFA in relation to the acquisition of a road traffic management system. The basic assumption was that a single system be acquired for Namibia, providing access for all users.

The legislation concerned should provide for –

- The establishment of an executive body responsible for the development and adherence to a national road traffic law enforcement management plan;
- The implementation of a road traffic offence prosecution and adjudication model;
- Fixed penalties for offences;
- Powers of enforcement and prosecution officers;
- Alternative penalties, such as correctional training.

#### **4.4 THE PROPOSED ROAD TRAFFIC OFFENCE MODEL**

##### **4.4.1 Basics Underlying the Model**

The Road Traffic Offence Model (RTOM) was developed based on

- (a) the fact that the Constitution of Namibia, gives everybody the right to a fair, but most importantly, a public hearing; and
- (b) our finding that the three countries visited, as well as the USA and Britain have not removed road traffic offences from the ambit of the criminal law at all, but have implemented administrative and management procedures that enhance the criminal procedure.

The fact that resources are stretched to the limit was also taken into account. We therefore attempted to not promote the establishment of yet another parastatal, but rather to utilize available resources.

The model –

- Assumes that MWTC will manage it and hear representations at a central level by appointing additional legally qualified representations officers;
- Relies on the classification of road traffic offences into the following categories:
  - Serious Driver Behaviour Offences;
  - Less Serious Driver Behaviour offences and Serious Technical Offences;
  - Petty Technical Offences;
  - User Charges (vehicle licence fees and parking fees).
- Relies on the implementation of a computerized road traffic management system, accessed by MWTC/the Road Safety Agency, the Lower Courts, the Nampol, the Municipal Road Traffic Units and the Road Transport Inspectorate of the Roads Authority;

- Does not make use of compounding of offences (the offer to pay a fine to prevent prosecution). Instead, a 48-hour notice to rectify the deficiency is issued, the default on which prosecution follows.
- Relies on a Driver Improvement Points System being implemented in accordance with which a driving licence is suspended for prescribed periods of time if a driver has accumulated the predetermined number of points in a predetermined period of time.
- Assumes that no road traffic offences except the serious driver behaviour offences and suspensions will be reflected on the offender's criminal record.

#### **4.4.2 The Model**

##### *4.4.2.1 Classification of Offences*

The current Fines List contains approximately 2000 offences. It is therefore impossible to classify all those offences in this document. For the purposes of this document only the serious offences will be indicated, while the remainder of the offences will be referred to in generic terms.

- **Serious Driver Behaviour**

Serious driver behaviour offences should include at least the following:

- All drunk driving offences (blood, alcohol and influence);
- Reckless and negligent driving;
- Reckless or negligent driving involving death or injury;
- Hit and run accidents.

Most of the offences are self-explanatory. The Road Traffic and Transport Act, 1999, provides for these penalties in that the driving licence of a person convicted of these offences must under certain circumstances be suspended in the case of drunk driving, reckless driving resulting in death or injury or hit and run accidents.

- **Less Serious Driver Behaviour and Serious Technical Offences**

Serious technical offences would as an example include:

- Failing to obtain an abnormal load permit;
- Serious overloading (exceeding a predetermined level);
- Serious speeding (exceeding a predetermined level);
- Operating a motor vehicle without a cross-border permit under circumstances when such a permit is required;
- Operating a motor vehicle without an operator card if such a card is required;
- Serious unroadworthiness.

The system of registering an operator for "commercial" motor vehicles, was implemented by the Road Traffic and Transport Act, 1999 in order to vest liability for the operation of those vehicles with the person or entity who is responsible for management decisions relation go the use of the vehicle. Research showed that many companies price their transportation based on loads that exceed the legal limit. The driver of the vehicle is prosecuted while he/she has no control whatsoever over the decision to overload the vehicle. The same applies to vehicle maintenance and speed. A vehicle must eg undertake a certain number of trips per day to achieve an



income goal set by management. To achieve this goal, the driver speeds excessively.

The contribution to the cost of maintenance of the road infrastructure by overloaded vehicles is well documented. While the effect of overloading has been documented and calculated, the law has been slow, if not unwilling, to recognise the mischief and to impose sanctions that are commensurate with the offence. Some successes were, however, achieved in this regard. The Zimbabwean Supreme Court, in the 1970's, recognised the fact that the road infrastructure is a national asset and that overloading damages that asset, which is in dire economic circumstances difficult to replace or even maintain. Penalties imposed for overloading offences should relate to the damage caused by the overloaded vehicle.

The Road Traffic and Transport Act, 1999, provides for the seizure and forfeiture of a motor vehicle used in any of the above offences. This provision has not been invoked by the courts or acted on by law enforcement agencies.

- **Petty Technical Offences**

Petty technical offences will include offences such as direction indicator not being in a working condition or the vehicle not displaying a token indicating that the vehicle is subject to a specific speed limit.

- **User Charges**

Vehicle registration and licensing fees are determined by the Road Fund Administration Act, 1999, to be road user charges. Parking fees are seen internationally as user charges. The London Borough even regulates parking through a separate Act and the collection of parking penalties has been privatized. In essence, parking space is bought from the authority on whose road you park.

User charges should be collected and penalties imposed should be seen as penalty interest, rather than a criminal sanction.

#### **4.4.3 Processes in relation to the Offences**

##### *4.4.3.1 Serious Driver Behaviour Offences*

The serious driver behaviour offences should be treated as criminal offences and processed as they are currently. Arbitrary sanctions should in these cases not be prescribed. The misbehaviour of the offender by eg causing death by negligent driving may not to the same degree be blameworthy as found in other criminal offences (such as attempted murder), but the consequences of his/her misbehaviour is out of all proportion to the offence. Court officials are well equipped to determine the blameworthiness of offenders and in imposing sanctions commensurate to the offence. Making recent research information available to court officials will enhance this ability.

With regard to procedure the Court should, however, be assisted. The procedure in the case of a serious driving offence would be as follows:

- The offender will be arrested on the spot or where he/she is first found.

- On initiation of prosecution, the driving licence of the offender is administratively suspended pending the outcome of the court hearing. The driving licence must be handed to the law enforcement officer at the scene, who must hand it to the..... (who administers the Namibian Traffic Information System) (NATIS) and who will update the traffic management system accordingly.
- Where the law enforcement official involved is of the opinion that the offender will attend the Court hearing, he/she may release the offender on his/her own cognizance.
- Where the law enforcement officer is of the opinion that the offender would probably not turn up at his/her court hearing, the offender must be detained and brought before the Court within 48 hours.
- The particulars of the arrest, the court date and the particulars of the offender and the vehicle involved in the offence must be recorded on the traffic management system.
- The Court hearing will take place on the determined date.
- The Court finding must be entered onto the traffic management system.
- If the offender is found guilty, the system will update the offender's record by indicating that his/her driving licence is suspended/revoked and the period for which it is suspended.
- The NATIS will update the traffic management system and the driver register accordingly.
- Upon the expiry of the suspension period, the offender's driving licence may be reinstated.
- After the expiry of a period of time, eg ten years, the person whose driving licence was revoked, may apply and be tested for a new driving licence.

#### *4.4.3.2 Less Serious Driver Behaviour Offences and Serious Technical Offences*

These offences include camera offences and on-road law enforcement where a notice to appear in court in terms of section 56 of the CPA is usually handed or mailed to the offender. Currently, rather a great percentage of offenders still ignore the notice and wait for the summons (sec 54 of the CPA) to appear in court to be served on them. The section 56 notice to appear in court contains the offer to the offender to pay an admission of guilt fine at the Magistrate's Court or at a Police Office.

It is proposed that this procedure is adapted as follows:

- (a) The notice is handed to the offender at the roadside (as is currently done) when possible.
- (b) The official handing of the notice to the offender must enter the details of the offender from his/her credit card type driving licence onto the traffic management system through a system of remote communication.
- (c) The official must when entering the offender's particulars, determine from the system through remote communication whether there are any outstanding warrants of arrest or outstanding fines noted on the system against either the driver or the vehicle.
- (d) If an outstanding warrant of arrest is noted, the official must arrest the offender and seize the vehicle.
- (e) The vehicle may be released to the owner if the offender is not the owner of the vehicle.

- (f) When entering the offender's particulars on the system, the system must generate the notice to appear in court as well as determine the court roll for the day of the appearance.
- (g) The Official must update the NATIS to reflect the fact that the offender has been fined/that the prosecution process has been initiated against the offender.
- (h) The offender now has the choice to appear in court or to pay the admission of guilt fine at any Magistrate's Court, a Registering Authority or a Police Office or to make representations to the legal personnel employed by MWTC.
- (i) If the offender pays the admission of guilt fine, the traffic management system and the NATIS must be updated to record the fact and to record the prescribed penalty points against the driver or the vehicle owner.
- (j) In the case of representations being made to the legal personnel, the system must be updated to reflect the fact that the representations are being evaluated. This process must be carefully managed to limit the lapse of time from the receipt of the presentations to the decision.
- (k) The legal personnel evaluating the presentations, may either withdraw the charge or deny the representation, but will not be allowed to reduce fines.
- (l) Should the offender proceed to Court, and be found guilty, the cost of the court process must be factored into the fine in accordance with the Singapore example where the Court fines are at least double the admission of guilt fine. Note that the prosecutor will not be able to reduce the fine, the offender will have had a chance to make representations, which will have been evaluated by legally qualified people.
- (m) If the court finds the person not guilty, the traffic management system and the NATIS must be updated accordingly to record the fact and no penalty points are recorded against the driver or the vehicle owner.
- (n) If the offender does not show up at the court, the clerk of the court must enter the information onto the traffic management system and a summons should be automatically generated by the system. These summonses will be authorized by legal personnel employed by MWTC or the Road Safety Agency.
- (o) The summons may be served by registered post.
- (p) After the summons has been served, the court process will follow as in paragraphs (l) and (m).
- (q) If the offender does not show up at the court, the clerk of the court must enter the information onto the system and the system will automatically generate a warrant of arrest to be authorized by the Magistrate concerned.
- (r) The Nampol/bailiff executes the warrant of arrest and the offender is brought to court. The processes in paragraphs (l) and (m) now follow.
- (s) The legislation should provide that in the event of arrest, the offender might not be detained unless the arresting official has a reasonable suspicion that the offender will not attend the court hearing.
- (t) If a person wants to re-licence his/her vehicle or renew his/her driving licence while any of the above matters are outstanding, he/she will not be allowed to do so unless he/she proves that he/she has or is in the process of finalizing his/her "unattended business".

Each step of the above process must be recorded on the traffic management system to ensure the equal application of the law in all cases and to facilitate performance management. If, eg the legal personnel evaluating representations withdraw a

charge, full reasons must be recorded on the system. The representations should also be evaluated in terms of well-defined and legally founded guidelines.

#### *4.4.3.3 Petty Technical offences*

Petty technical offences relate primarily to the equipment fitted to vehicles. These offences pose a problem as the offender is currently given an opportunity to pay a composition fee (in terms of section 341 of the CAP) to prevent prosecution. These are ignored in most cases and over and above, the payment of a composition fine does not rectify the deficiency – one needs to ensure compliance with all equipment requirements. We therefore followed the American example in this regard. The offender will be given a period to rectify the deficiency, failing which he/she is prosecuted in the same manner as for the serious offences. The reason being that in addition to operating a motor vehicle which is not in the required condition, the offender is in contempt.

- (a) If a minor technical offence is committed and it is detected at the roadside, the officer in question must issue to the driver of the motor vehicle a notice, affording him/her 48 hours within which to correct the deficiency and present the vehicle at any of the enforcement agencies for verification.
- (b) The issuance of the notice is noted on the traffic management system.
- (c) If the system is not updated to reflect that the deficiency was rectified, the system automatically generates a notice to appear in Court, and the procedure for the more serious technical offence follows.

#### *4.4.3.4 User Charges*

The nature of a user charge does not necessitate criminal prosecution. We therefore propose that the international example is followed in collecting vehicle licence fees and parking penalty fees in a manner similar to that employed by the courts in civil debt collection.

- (a) If the road user is either in arrears with regard to his/her vehicle licence or has exceeded the time paid for at the parking meter, he/she is given/sent a reminder.
- (b) Upon further default, a warning in relation to the impending debt collection procedure should be sent to the defaulter.
- (c) Should the user still remain in default, the civil court/MWTC will issue a default order, authorizing the sale in execution of any property of the defaulter, the attachment of the defaulter's salary; deductions from the defaulter's bank account or the impoundment of the vehicle.

#### *4.4.3.5 The collection of fines*

All the countries examined allow the payment of fines or user charges by instalment. Our system currently does not allow for that except under specific circumstances are determined in the CPA. We noted especially in New Zealand that the instalment option created a huge administrative burden on the court system. In addition hereto, the granting of this option will make inroads into the income from fines unless interest is charged. Granting an instalment option is granting credit and the usual principle that credit comes at a price should apply if this option is followed. The RTOM does not provide for the instalment option. In addition to "debt" collection process, the New

Zealand legislation allows the immobilization of the motor vehicle while the fine remains unpaid. This might be very difficult to impose in Namibia, but should be considered.

#### 4.4.3.5.1 *Where should the fines go?*

The Road Fund Administration Act, 1999, is the legal vehicle that regulates the funding of roads and related matters. The Road Fund must, in terms of section 17 of its enabling Act, be utilized mainly towards the management of the roads network. Contributions by the Road Fund to other supporting and ancillary functions are, however, also authorized by section 17 of the Road Fund Administration Act, 1999. Based on the principle of the Road Fund having to support the building, maintenance and management of the roads network, the Act, in section 16(1)(i) determines that fines imposed in respect of the overloading of vehicles (and so causing damage to a roads network that the Roads Authority must protect), must be paid into the Road Fund. While the principle is sound, this section is not in conformity with the Road Traffic and Transport Act, 1999. The Road Traffic and Transport Act determines that any fines imposed or money estreated as bail in terms of that Act must be paid into the State Revenue Fund (section 109). It follows that the Road Traffic and Transport Act must be amended accordingly.

The Road Fund Administration Act, 1999, also determines that the RFA must *to the extent that it is in the interest of the road users, utilize the moneys available in the Fund to defray the cost of traffic law enforcement and adjudication functions performed by any competent authority for purposes of promoting a safe and efficient road system, including the control of the overloading of vehicles.*

Fines cannot be seen as a road user charge. In the “Report of the Interministerial Committee of Technical Experts on the Proposed System of Road User Charges” dated 22 August 1994, the expression “road user charge” is defined as: “*any charge levied on road users towards the recovery of the costs associated with the provision, maintenance and operation of roads*”. In paragraph 2 of that Report it is stated: “Road use charging instruments are typically one or more of the following: fuel levies, vehicle licence fees overload and abnormal load charges and weight-distance charges.”

More importantly, in paragraph 4.12.2.2 of the last mentioned report it is stated: “The Committee further noted that no policy on the matter of the utilization of revenues from traffic fines exists or has been formulated. The Committee is of the view that revenues from traffic fines should in principle not be regarded as road user revenues but dealt with in the same way as revenues from penalties imposed in terms of legislation in general.”

Given that the Road Fund Administration must defray the cost of law enforcement and adjudication of traffic offences, and that the RTOM will alleviate the administrative burden of the courts considerably, it is proposed that the fines and user charge penalties should be paid into the Road Fund.

Whether parking fees and penalties may be dedicated to the local authority to which is owed, should be investigated. The paying of parking penalties into the Road Fund will be a sensitive matter as it potentially may cause loss of income to the local

authority concerned. This matter will have to be consulted with the local authorities involved and the RFA.

#### *4.4.3.5.2 Fines and Penalties*

The study indicated that innovative penalties must be implemented in relation to traffic offences. Fines, however, remain the backbone of the system of punitive measures to be implemented. The problems experienced in Namibia in relation to the setting of the level of fines are experienced throughout the world. While fine levels may be determined by traffic experts, prosecutors have the power to reduce fines and sometimes reduce fines of really serious offences, not realizing the impact of the offence. At the same time, the legal principles in relation to the determination of punishment should apply – punishment must bear relation to the seriousness of the crime, the offender's financial status must be taken into account, etc. In all the countries visited as well as in the USA and the UK these problems have been solved by implementing a system of fixed fines, adding cost to the fines as the process develops. We propose a model that determines minimum and maximum levels for fines, in accordance with the table in paragraph 3.4.2.4.5. This leaves the Court with discretion, but limits the court to realistic fine levels.

#### *4.4.3.6 Driver Improvement Points System (DIPS)*

The RTOM, as mentioned, relies inter alia on a driver improvement points system that will result in the suspension of a driving licence once the predetermined number of points within a set period of time. The DIPS all over the world are very similar. In this regard, the USA, Australia and the UK were studied in addition to the countries discussed in this paper. Innovative penalties have been implemented. Drivers are re-trained, perform community service in relation to traffic safety, are forced to undergo traffic "attitude" courses, etc. A salient feature of all the countries examined in this regard is that the penalties are fixed. Neither the Court nor the presentation officers have any discretion not to award penalty points. This fact necessitates the careful consideration of the determination of the number of points to be awarded in relation to each offence.

## PART 5 : AARTO INFRASTRUCTURE STUDY

This part of the study will focus on the following:

- ❖ Estimated cost structure for the South African model;
- ❖ Study to determine the feasibility of the South African model in Namibia, taking factors such as economies of scale, availability of infrastructure, operational issues etc into consideration;
- ❖ Proposal for the Namibian RTOM system;
- ❖ Required infrastructure to support the RTOM proposal, and
- ❖ Estimated cost for the proposed Namibian system.

The income and cost values used in the preparing the cost analysis and cashflow are estimated for planning purposes.

### 5.1 ESTIMATED COST OF THE SOUTH AFRICAN SYSTEM

As the Road Traffic Infringement Agency is not yet established in South Africa, it is necessary to make assumptions regarding the variables in order to prepare a realistic cost analysis for the Agency.

The following assumptions are made in respect of the variables:

#### (a) Fee per notice

Income is generated by the Agency from the prescribed levies for the issuing of courtesy letters, enforcement orders and other notifications. The discount amount an infringer would get if he/she would pay the penalty in the initial period after the infringement has taken place, is kept by the Agency upon concluding the applicable cases.

It is assumed that:

- |  |             |
|--|-------------|
| ❖ The average fine is                            | R250,00     |
| ❖ Average discount on a fine is 10%              | R 25,00     |
| ❖ Average amount payable to an authority is      | R225,00     |
| ❖ The levy for an unsuccessful representation is | R150,00     |
| ❖ The levy for issuing a courtesy letter is      | R 75,00     |
| ❖ The levy for issuing an enforcement order is   | R100,00 and |
| ❖ The levy for serving a warrant is              | R225,00.    |

The issuing of other notifications (eg Notification of Partial Payment, Notification of Dishonored Payment and Notification of Dishonored Instalment) also results in the infringer being levied with a prescribed fee. It is, however, assumed that the number of these notifications issued, only comprises a small percentage compared to the above-mentioned notifications and is therefore not included in the cost analysis of the Agency.

#### (b) Number of Notices

It is assumed that the number of notices issued by traffic authorities will increase as indicated below:

- ❖ 60 000 notices in the first 6 months per month;
- ❖ 120 000 notices in the next 4 months per month, and
- ❖ 180 000 notices per month thereafter.

© Percentage of compliance to Notices

In order to determine the manpower and other requirements for the Agency, it is essential to know the number of notices that are referred to the Agency and the number which are dealt with by the traffic authorities themselves. Based on statistics provided by the South African provincial governments and incorporated into the business plan of the South African AARTO, it is assumed that:

- ❖ 40% of infringement notices will be paid in the initial period after issuance thereof and the cases will be closed;
- ❖ 10% of infringers will opt to make representations and will receive a result of the representation, and
- ❖ 50% of infringers will not respond in the initial period and will receive a courtesy letter.

(d) Percentage of compliance to representations

It is assumed that of the 10% of infringers that initially submit representations:

- ❖ 50% are successful and the cases will be closed, and
- ❖ 50% are unsuccessful and the infringer must pay the amount outstanding or will receive an enforcement order.

(e) Percentage of compliance to Courtesy Letters

It is assumed that:

- ❖ 25% of the infringers that received courtesy letters, do not respond in the additional period allowed, and
- ❖ 25% of infringers whose representations were unsuccessful do not respond in the additional period allowed.

(f) Percentage of compliance to Enforcement Orders

It is assumed that 20% of infringers that received enforcement orders do not respond in the additional period allowed.

(g) Percentage of compliance to warrants and overall non-compliance

It is assumed that:

- ❖ 20% of initial infringers that received enforcement orders will receive warrants. This percentage of infringers that received enforcement orders, is decreased to 2,5% that will also receive warrants.
- ❖ 10% of infringers upon whom warrants were served, disappear after the serving of such a warrant or do not have moveable property that can be sold to account for the outstanding amount. This outstanding amount will be added onto the infringer's licence renewal notice or the renewal of the driver's licence.
- ❖ It is assumed that 10% of all notices are not complied with. Infringers can therefore not be found due to submittance of false details or vehicles that



had false numberplates and as a result thereof could not be traced. It is also assumed that these cases are already identified before the actual issuing of the courtesy letters and enforcement orders. Although these unsolved cases that were identified, result in a revenue loss by the Agency, the cases are referred to NaTIS. Upon a licence renewal or the renewal of a driver's licence, the person will be identified and proper action will be taken.

#### 5.1.1 Cashflow for first 24 months of operation

The following table depicts the total cashflow over a period of 24 months after the establishment of the RTI Agency in South Africa at the time when the RTI Agency was initially planned. These figures include the start-up cost and roll-out of the system with provision for additional capacity in terms of personnel and other infrastructure as the workload increases.

<b>INCOME</b>	<b>RSA RAND</b>
Revenue from prescribed fees	43 551 000
Total penalties collected	119 370 000
Interest income	0
<b>Total income for first 24 months</b>	<b>162 921 000</b>
<b>EXPENSES</b>	
Salaries	54 751 000
Rent paid	4 897 200
Electricity and municipal levies	138 870
Consumables	555 480
Network operating cost	620 000
Telephone and fax operating cost	1 251 334
Maintenance of copier	19 084
Printing operation (office)	93 000
Printing operation (bureau)	909 858
Postage fees	19 130 400
Sheriff's fees	5 040 000
Marketing	16 000 000
Interest paid	14 440 536
Insurance	561 153
Bank levy	1 638 420
Furniture	1 598 782
Computer network capital cost	3 632 500
Printers capital cost	688 000
Telephone and fax capital cost	355 743
Copier capital cost	345 550
Software capital cost	3 207 790
Software development cost	3 500 000
Maintenance – computer hardware	914 031
Maintenance – application software	792 031
System integration	4 716 490
Printing of pre-printed forms	5 329 872
Recruitment cost of personnel	3 901 800

<b>INCOME</b>	<b>RSA RAND</b>
Training	7 803 600
Consulting fees	4 682 160
Establishment of office environment	1 139 600
<b>Total expenses for first 24 months</b>	<b>162 654 285</b>
<b>NET INCOME</b>	<b>266 715</b>

It can be seen that the estimated net income after two years of operation amounts to R266 715. This amount, however, includes capital cost to establish the Agency such as furniture, computer equipment and network, software costs and software development costs, telephone system cost, office environment etc. Although these items must be depreciated, the net income will be higher in subsequent years due to establishment cost already covered.

The above cashflow has not been adjusted for inflation and currency changes since the cashflow was compiled for the RTI Agency during the initial business plan for establishing the agency.

## **5.2 FEASIBILITY OF REPLICA OF SA AARTO IN NAMIBIA**

Due to economies of scale the AARTO process and system as proposed for South Africa is not viable even if the offence tariffs are increased to increase the income due to the low number of traffic offences in Namibia relative to South Africa.

The SA AARTO can, however, not be implemented as proposed in South Africa since South Africa already has local traffic management systems at most local authorities and associated infrastructure implemented, which is not the case in Namibia. Almost all local authorities in South Africa have a traffic management system installed that is utilised by both the local traffic police and courts.

However, the reduction in accidents and the subsequent cost saving which is estimated with implementatoin of the AARTO makes the RTI Agency feasible. This cost saving calculation in respect of the reduction of accidents is depicted in Appendix A.

The estimated 5 year cashflow for establishing a RTI Agency in Namibia is depicted in Appendix B. Two scenarios are described in Appendix B for which separate cashflows were prepared. The assumptions are similar to that of the SA AARTO, however, the parameters were changed due to Namibia's unique circumstances in respect of remote areas in the north. The parameters were increased, eg non-compliance (30%), no response in initial period (50%) and initial payments (50%). A 10% cumulative decrease per annum in traffic offences was also assumed.

The first scenario assumes that no networks exist at the relevant traffic police offices, parastatal institutions, and organs of state such as the Road Fund Administration, Roads Authority, National Road Safety Council and the Ministry of Justice (Lower courts). The second scenario assumes that existing equipment and networks exist at the above traffic police offices, parastatal institutions, and organs of state. The second scenario is applicable since the Ministry of Justice is planning to implement a wide area network with workstations for the NAMCIS at the lower courts and the Nampol is also in the process of implementing a network at regional offices.

From Appendix B it can be seen that the establishment of a dedicated RTI Agency in Namibia is not recommended, due to the 5 year cumulative loss of N\$96 million for first scenario and N\$ 70 million for the second in respect of the Agency and associated infrastructure. The RTI Agency is viable because of the saving in cost to the country due to the reduction in traffic accidents that amounts to N\$43 million and N\$69 million respectively.

### **5.3 NAMIBIAN PROPOSAL: ROAD TRAFFIC MANAGEMENT SYSTEM (RTMS)**

As the Namibian proposal comprises the establishing of national infrastructure and traffic management systems in addition to the AARTO system, the feasibility of the solution is determined by the total saving in cost for the country that is accomplished by implementing the proposed Road Traffic Management System (RTMS) with an optimised judicial and administration process.

The Namibian proposal includes the optimisation of administration and prosecution processes as well as the introduction of payment incentives, cost recovery and civil debt collection (non-criminal offences only eg parking fines and licence fees).

The Namibian proposal is implemented by means of facilitating synergy between the business processes, operations and systems of the registering authorities (“NaTIS offices”), Ministry of Justice, law enforcement agencies (Namibian Police and traffic police services of the Local Authorities).

Synergy is obtained by sharing and optimising existing infrastructure, administration systems and processes of processing traffic fines by means of introducing new control measures to monitor and enforce payment of outstanding fines eg utilising control and enforcement mechanisms within the Namibian Traffic Information System (NaTIS).

### **5.4 REQUIRED INFRASTRUCTURE TO SUPPORT THE RTMS PROPOSAL**

#### **5.4.1 Personnel**

Existing personnel of the MWTC, NaTIS Helpdesk and RFA will be utilised and additional recruitment would be required. As an alternative to recruit representation and administration officers, the MWTC can train existing personnel to perform tasks that were previously performed by the office of the state prosecutors. The recruitment, salaries and training is included in the cost analysis of the RTMS proposal.

Capacity of the NaTIS Helpdesk must also be increased due to the additional requirement of removing driver and operator transaction restrictions from the NaTIS.

The RFA may in future also need to appoint an additional accountant and auditor to attend to the increased workload due to the availability of more detailed information records to be accounted for as in the case of the current manual systems.

##### *5.4.1.1 Law enforcers*

The current law enforcement personnel (municipal traffic officers, Namibian Police Service, Road Transport Inspectors) will issue traffic offence notices.

#### *5.4.1.2 Issuing Authority administrative personnel*

Personnel currently responsible for the processing of traffic fines at the Issuing Authorities will be responsible for the capturing of the traffic offences on the RTMS as well as recording the offence on the NaTIS by means of capturing a person administration mark (PAM) and/or a contravention against the record of the offender.

#### *5.4.1.3 Ministry of Works, Transport and Communication (MWTC)*

- ❖ **Representations Officer (6x)**  
The MWTC representations officer must consider representations submitted by post to the Ministry and make recommendations on the representations to the state prosecutors. One of the representations officers is to be appointed as a manager of the RTMS section at MWTC. The representations officers must have a legal qualification and proven expertise in the field of road traffic law, or have a qualification in road traffic management and control.

The MWTC representations officer must be empowered by law to issue warrant of arrests and cancel/withdraw traffic offence notices. Thus, at least one representations officer must be appointed as a sheriff in terms of the Sheriff's Act (Act No 90 of 1986).

When the representations officer elects to issue a warrant of arrest, the warrant of arrest is printed from the RTMS, signed by the sheriff and sent by registered mail to the offender.

It is assumed that it takes a representation officer 20 minutes in total to evaluate a representation.

- ❖ **Administration Officer (1x)**  
The administration officers must assist the representations officers with all administrative duties. He/she must issue receipts, update the information system of the agency, assess and disburse fees and penalties. He/she must have Grade 12 with at least 3 years' relevant working experience in a computerised office environment.

It is estimated that the number of administration officers will be 10% of the number of representation officers.

- ❖ **Secretary (1x)**  
The secretary must assist the representations and administration officers with all secretarial duties. He/she must assist with typing and general office duties including scheduling meetings in respect of representations. He/she must have Grade 12 with at least 1 year's relevant working experience in a computerised office environment.

It is estimated that the number of administration officers will be 10% of the number of representation officers.

#### *5.4.1.4 Ministry of Justice*

❖ Cashier of the Court

The status quo in respect of the number of personnel members will remain the same.

The cashier must issue system generated receipts from the RTMS for monies received as payment for traffic offences as well as for fines as determined by the court (in the case where the offender was found to be guilty). He/she must have Grade 12 with at least 3 years' relevant working experience in a computerised office environment.

❖ Clerks of the Court

The status quo in respect of the number of personnel members will remain the same.

The court calendar for traffic offences will be system-generated by the RTMS.

❖ State prosecutors

The status quo in respect of the number of personnel members will remain the same.

The only contact the state prosecutors will have with traffic offenders is during court cases. The state prosecutors will not be allowed to attend to any traffic offender unless a MWTC representations officer has decided that the state prosecutor should assess the merits of a specific representation.

*5.4.1.5 Road Fund Administration*

❖ Accountant (1x)

The accountant must assess, disburse fees and penalties and reconcile payments as well as ensure the maintenance of an updated accounting system. The RTMS keeps record of all monies received as well as the authority that receives such monies. The accountant must have a B.Com and relevant accounting experience in a computerised office environment.

It is estimated that the number of Accountants will be 3% of number of cashier officers.

❖ Auditor (1x)

The auditor must audit both the system and procedures supporting the RTMS in respect of monies received, closed/withdrawn traffic offences and demerit points recorded on NaTIS and the transfer of monies received to the various accounts.

It is estimated that the number of auditors will be 3% of number of cashier officers.

#### 5.4.1.6 *Roads Authority*

The NaTIS Helpdesk is to remove personal administration marks (PAM) or contravention records that restrict driver and vehicle licence transactions on the NaTIS for such offenders as recorded by the Issuing Authorities.

The PAMs and contravention records will only be removed upon proof of payment or innocence.

### 5.4.2 **Office Requirements**

#### 5.4.2.1 *Office space*

Existing office space would be utilised since no additional personnel would be appointed.

#### 5.4.2.2 *Office equipment and consumables*

Additional office equipment would be required.

#### 5.4.2.3 *Information Management Systems*

##### ❖ Na-NaTIS

The NaTIS is used, inter alia, to record personal administration marks (PAM) and/or contraventions and the amount of demerit points accumulated. If a case is not resolved, the offender has to settle the matter at the Magisterial Court, Municipal Traffic Police or at a Nampol Traffic Police office before the vehicle's licence disc and operator card (if applicable) is renewed by the NaTIS.

Upon payment of the contravention the receipt is forwarded to the NaTIS Helpdesk to remove either the PAM and/or close the contravention record from the account of the offender. This manual procedure is to be followed until a real-time interface has been developed and implemented between the NaTIS and RTMS.

##### ❖ RTMS

The following provides a preliminary indication of the expected software modules (and the functionality thereof) in broad terms. The word "module" is used herein a generic sense, and does not suggest that proprietary software is excluded.

The RTMS is described and comprises of the following modules:

- Traffic contravention;
- Debt collection;
- Accounting;
- Accident monitoring;
- Operations management'
- Goal management;
- Offence monitoring;
- Incident monitoring;

- Weighbridge;
- GIS Maintenance, and
- Remote communication (roadside inspection).

The key aspects of the system for purposes of the administering offences are the traffic contravention, debt collection and accounting modules. The other modules are key to the successful traffic management.

The traffic contravention module will be used for the capturing of offences, issuing of receipts for payment received and generating of a court calendar. The offences are captured by the Issuing Authorities (IA) on the contravention module of the RTMS and will be forwarded electronically to the NaTIS via a File Transfer Protocol (FTP). These contravention records will include cases concluded by the IA, and cases concluded by the courts.

The accounting module is required to track accounts receivable (from offenders) and accounts payable (to IAs/Namibian Traffic Police) in addition to providing reports for Ministerial and management evaluation. The accounting module allocates cost and income to various accounts of the role players, eg MWTC, Ministry of Justice, Issuing Authorities, Traffic Police, Registering Authorities and NaTIS.

The debt collection module is required to administer the civil debt collection process in accordance with legislation eg printing of notices to the offender, recording court decision, printing notices to the offender's employer, recording of alternative payment arrangements, etc.

#### 5.4.3 Wide Area Networks

The RTMS is to be implemented as a central system with remote terminals at the offices of the following organs of state:

- ❖ Ministry of Justice (head office and magisterial courts);
- ❖ MWTC;
- ❖ Namibian Traffic Police
- ❖ Municipal Traffic Police;
- ❖ NaTIS Administration;
- ❖ Road Fund Administration;
- ❖ National Road Safety Council.

The network topology used for the calculation of the cost is that of a star network configuration whereby each office will be linked to the RTMS server via data lines and routers.

The success of the system is based on synergy between the above organs of state and each has a key role to fulfill in order for a streamlined traffic management process of which the prosecution of traffic offenders is only the policing aspect thereof.

A brief description of the responsibilities of the above organs of state and parastatal institutions are depicted in the Table 1.

**Table 1 : Utilisation of the RTMS**

No	Organ of State/Institution	Utilisation
1	Ministry of Justice (head office & lower courts)	Updating the court calendar, decisions of the court and issuing of subsequent notices
2	MWTC	Processing representations, issue notices and warrants of arrests by means of registered mail
3	Namibian Traffic Police	Recording of traffic offences. Utilising the other modules of the RTMS for traffic management and policing.
4	Municipal Traffic Police	Recording of traffic offences. Utilising the other modules of the RTMS for traffic management and policing.
5	NaTIS Helpdesk	Verify outstanding offences before removing driver and operator transaction restrictions from the NaTIS.
6	Road Fund Administration	Accountant to reconcile monies received
7	Roads Authority	Road Transport Inspectors to capture overloading and cross border traffic offences and provide NaTIS helpdesk facilities.
8	National Road Safety Council	Council to analyse the statistics in respect of types of offences, incidents and accidents.

#### 5.4.4 Printing Services

An outsourced central printing bureau will do the printing of all notices sent out by registered mail by the MWTC. The MWTC will provide all data to be printed electronically to the central printing bureau. The printing bureau will prepare all the notices to be in postage ready format and deliver the notifications to the Namibian Post Office.

Mailing and franking equipment are included in the cost analysis to allow the MWTC to prepare standard letters for posting without the use of a bureau service. This cost can be saved.

#### 5.4.5 Postal Services

The Namibian Post Office will receive the notifications in postage ready format from the printing bureau and will capture all applicable notifications on the Track and Trace system via a barcode affixed to the notification.

#### 5.4.6 Banks

The payment of offences into dedicated bank accounts of the MWTC for the settlement of offences is a future payment incentive. The reconciliation of the bank payments with offences on the RTMS requires additional personnel capacity and



should only be implemented when the cost of a dedicated financial/reconciliation clerk warrants the benefits of such service to be provided to the public.

When the service is introduced, the MWTC will operate accounts at the major banks represented in Namibia. This will allow offender to pay the amount due at any branch of the particular banks. A reference number will be captured against each payment to identify the payment. The MWTC will download electronic bank statements on a daily basis to update the RTMS with all payments received.

#### **5.4.7 Estimated cost of the RTMS proposal**

The RTMS proposal is a combination of an optimised prosecution process that is supported by an administration component as well as a national system infrastructure. The limited statistics available have been extrapolated to determine the future income from traffic notices whereby the offender pays a lesser amount if he/she presents payment before or on the date of the court hearing. The extrapolated statistics and the calculated future income are depicted in Appendix C.

Similar to the RTI Agency of South Africa, two scenarios were prepared and are depicted in Appendix D. The first scenario assumes that no existing equipment and networks exist at the relevant traffic police offices, parastatal institutions, and organs of state such as the Road Fund Administration, Roads Authority, Namibian Road Safety Council, and the Ministry of Justice (Lower courts). The second scenario assumes that existing equipment and networks exist at the above traffic police offices, parastatal institutions, and organs of state.

From Appendix D it can be seen that the RTMS proposal is recommended, as the 5-year cumulative loss of N\$ 65million for first scenario and N\$ 44 million for the second scenario. The RTI Agency is viable because of the saving in cost to the country due to the reduction in traffic accidents that amount to N\$ 43 million and N\$ 69 million respectively.

This solution is recommended since the cumulative cost saving for the country is N\$ 73 million for the first scenario and N\$ 94 million for the second, as opposed to N\$ 43 million and N\$ 69 million respectively for the RTI Agency.

## **PART 6: CONCLUSION**

The current road traffic law enforcement, adjudication and prosecution procedures have its strengths and weaknesses. The strengths should be enhanced and the weaknesses improved.

The problems experienced locally are not unique to Namibia, the same problems occur worldwide. Many examples of adjudication models are available, but their common denominator is that none of the countries have removed traffic offences *in toto* from the criminal judicature. All the adjudication models are driven by improvements to the process, strong administrative support and strategic management.

The RTOM proposed in this document is based on non-negotiable fundamental rights, innovations of the international community, and the classification of offences, the implementation of a strategic management plan supported by a traffic management system.