

## ROAD SAFETY

### AS A HUMAN RIGHTS ISSUE

---

#### 1. Introduction

- 1.1 The carnage on South Africa's roads has reached alarming proportions. Detailed statistics are kept by the State on the Arrive Alive website; but it is sufficient for present purposes to note that according to the Medical Research Council some 18 000 people lose their lives on our roads each year and that the cost to the country of road accidents is in the region of R40 billion. Many houses, schools and sorely needed hospitals can be built with R40 billion.
- 1.2 It is accordingly imperative that the State react to the crisis, in which the annual death toll exceeds that in the Iraqi war, in a manner which is both reasonable and accountable. In this regard it must be stressed that the brunt of injuries and fatalities are borne by previously disadvantaged individuals. In a country in which there are about ten times as many people as vehicles, it is obvious that the poor are vulnerable as pedestrians on or near roads. But the problem goes further than this: The statistics indicate that the rate at which taxi passengers come to grief is four times higher than for other road users.
- 1.3 There is good cause for regarding the perils which road users face on a daily basis as a human rights issue. This issue calls for urgent remedial

action by the State, which has the constitutional obligation to respect, protect, promote and fulfil the human rights which enjoy entrenched status in Chapter 2 of the Constitution – our Bill of Rights.

- 1.4 There are specific rights enshrined in the Bill of Rights that are directly applicable to the situation on our roads.

2. **The Right to Life (s.11)**

Everyone in the new South Africa has the right to life, even convicted mass murderers. But on our roads 18 000 people per annum lose their lives in the ongoing chaos and carnage.

This loss of life has a knock-on effect in that bread-winners die, children go hungry, the economy is deleteriously affected and the bereaved friends and families of those who die on the roads are left to grieve. Those who have claims for damages have to go through the tortuous processes of the Road Accident Fund whether to prove fault and quantum as is now the case, or simply quantum, as will be the case, if amending legislation becomes law and survives constitutional challenge.

3. **Freedom from Violence (s.12)**

Everyone has the right "*to be free from all forms of violence from either public or private sources*". These words are a direct quote from s.12(1)(c) of the Constitution.

That there is violence on our roads is beyond question: Not only the intentional violence involved in running battles between rival taxi-operators, in hijackings and cash-in-transit robberies, as well as the depravity of that ever increasing band of road-ragers, but also the negligent violence inflicted in every serious accident on the persons and property of those involved. Accident victims receive their injuries by violent means. Obviously so. But our Constitution sets a standard that demands freedom from violence; here too, the State is failing in its obligation to protect everyone from the endemic violence on our roads.

4. **The Right to Human Dignity (s.10)**

This right, along with equality and freedom, is one of the most basic rights enshrined in the Constitution and has repeatedly been singled out by the Courts as a fundamental right in our new democratic order. The Bill of Rights explicitly states that everyone has "*inherent dignity and the right to have their dignity respected and protected*".

Road travel these days is not a particularly dignified activity. Dodging potholes, avoiding taxi wars and road-raging motorists, swerving around intoxicated pedestrians on highways, lingering in traffic jams at rush hour and praying to reach one's destination intact, are not the stuff of a dignified road lifestyle. Yet, the value system in place demands respect for and protection of everyone's dignity. There is nothing dignified in dying violently in a collision, nor even in sustaining serious injuries in a mass of mangled metal.

5. **Freedom of Movement (s.21)**

The right to freedom of movement enshrined in the Bill of Rights becomes illusory when the road network is converted into a war zone where citizens fear to tread, whether by day or more especially by night. The lack of proper maintenance of roads, the construction of roads with blind rises and other inherently hazardous design features and the serious shortage of effective law enforcers on the roads all serve to impair the freedom of movement to which we are entitled.

6. **Environmental Rights (s.24)**

If the road network in the country is regarded as an environment which is currently occupied by approximately 4 500 000 vehicles travelling in different (and frequently opposite) directions at the same time on the same surface, then our Constitution requires that this environment should not be harmful to the health and well being of those who find themselves in it. All too often the health and well being of road users suffer extremely adverse effects through being exposed to the various dangers which permeate the current conditions on our roads.

7. **Childrens' Rights to Protection (s.28)**

Every child has the right to be protected from neglect, abuse, or degradation. Children use the roads. They are cyclists, pedestrians, passengers in private vehicles, school buses and, all too frequently, overloaded bakkies. The



Constitution singles them out for special treatment because the future is in their hands. The devastation of serious personal injury is greater for those who are cut down in the bloom of youth, if not for any other reason than that they are obliged to endure the consequences of injuries for so much longer than adults injured in road accidents. Children are being inexcusably let down by the way in which conditions on roads have been allowed to deteriorate.

7. **The State's Duties**

The State has an obligation under s.7(2) of the Constitution to respect, protect, promote and fulfil all of the human rights discussed thus far. It is simply not doing so on our roads. These rights are not socio-economic or second generation rights which are intended to be "*progressively realised*". They are rights which are all already due to everyone.

The Courts are the custodians of the values contained in the Bill of Rights. When the State fails to live up to the standard set by the founders of our Constitutional democracy, the Courts are there to afford relief to those who feel aggrieved by or dissatisfied with the State's shortcomings.

The current manner in which national, provincial and local roads are policed, patrolled, controlled and monitored is unlawful and in violation of the rights of all road users whether they are drivers, passengers, pedestrians or cyclists.

Urgent steps are required to make roads safer. The solutions are obvious; radical improvement is needed in three main areas: firstly, law enforcement on roads, especially for those who speed and those who drive drunk, secondly,

maintenance and construction of roads, and thirdly, the attitude of drivers toward the privilege of using the roads.

Strategies to reduce congestion on urban road systems through the staggering of rush hour traffic and the improvement of public transport must be implemented without delay. These changes are not necessarily expensive – all that is required is decisive leadership and appropriate policy making. Our buoyant economy and the availability of more affordable vehicles will lead to a population explosion of vehicles. As this will bring more people onto the roads, it is imperative that the roads and the safety of road users be given top priority.

Speed plays a destructive role in most accidents. The technology to control speed is available. The taxi recapitalisation project is an excellent starting point for the installation of modern "*hi-tech*" devices aimed at intelligent speed adaptation (ISA) of vehicles. Traffic offenders could routinely be directed to fit such devices as part of their punishment. New vehicles should come with ISA equipment as a standard feature. Most freight fleets already have similar equipment and have benefited by it. Resistance to the notion of "*Big Brother*" watching our motorists is easily trumped by the crying need to reduce accidents in general and the death and injury toll in particular. In Kenya all vehicles are now required to install speed governors.

It is the responsibility of the State to devote adequate resources to effectively deal with the problems which give rise to the manifest lack of safety on the roads of South Africa. The problem is a huge and very expensive one. Firm

and decisive action has the potential to save the nation a good part of the R40 billion per year which it currently costs because no one has taken the lead by displaying the will necessary to take charge of the situation. The diminution of human misery and suffering which bold action will bring has no price.

This is certainly not a situation in which the "Government can't afford it" or resource constraints argument applies. On the contrary – the State can't afford not to swiftly implement the changes so obviously needed.

There is good news out of Kenya. The road accident toll in that country was slashed by about 73% after the responsible authorities removed some 30 000 unlicensed and unroadworthy vehicles from circulation.

#### 8. The Response of Civil Society:

It is now legal history that when rail commuters found that their need for and right to safety and security on our commuter trains was being neglected they successfully applied to Court for urgent relief and obtained an order which will substantially alleviated their plight.

There are many organisations in existence in South Africa which have a particular interest in road safety: the Automobile Association, Drive Alive and South Africans Against Drunken Driving (SADD) spring readily to mind.

It should come as no surprise when concerned citizens and organisations band together to seek relief from the Courts if the State remains in dereliction of its duties to respect and protect the human rights of those who use our roads.

decisive action is required. It is for the legislature and the executive to take that action. The failure to do so will inevitably give rise to a Court challenge in which declaratory, mandatory and supervisory relief will be sought. It does not need to come to that – the onus is clearly on the State to do what is right for road users. By focusing on the human rights violations which are the order of is incumbent upon the State to act swiftly to redress the situation reasonably