

# **Justice and Peace Department**

## **Southern African Catholic Bishops Conference**

### **Statement on E-tolling and Government Accountability**

*(to facilitate discussion in local communities)*

#### **Introduction**

The prospect of extensive e-tolling on the freeways surrounding Johannesburg and Pretoria has resulted in a great deal of public concern, protest and unhappiness. This has led to many delays in the project, to a number of changes in the proposed process and to the proposed charges. This raised many questions about Government accountability and the best way to fund the on-going need to maintain and upgrade our roads. Questions about possible corruption have been posed, and a number of court cases have been considering the issues that underpin this decision.

At this point, in the middle of all these legal clashes, with the court processes still on-going, the government intends to implement e-tolling within the next month or so.

The time has come for the Catholic Church to make its voice heard and to present our views regarding the moral issues that underpin all this legal and technological detail.

Key issues arise regarding government accountability to those they govern; regarding the need to be held accountable for the vast public funds that they disburse while tackling our infrastructural requirements. Important questions arise regarding the (apparently) vastly inflated costs that attach to such projects; regarding the reasons for constantly revising the amounts required to fulfil these needs. This is especially concerning in the context of recent revelations regarding price-fixing within the construction industry, raising concerns regarding bribes that may have 'greased the path' for such escalations.

It is in this context that we have decided to issue a public statement regarding these issues, and to initiate a series of activities aimed at encouraging others to join us in making our concerns heard, and in demanding an appropriate response to such concerns.

#### **History**

The SANRAL (SA National Roads Agency Limited) company and the Department of Transport took a decision some years ago (with the approval of the Cabinet) to proceed with the Gauteng Freeway Improvement Project or GFIP. These upgrades were required to reduce congestion on routes that are critical to the economic and social life of the province. They decided to adopt the 'user-pays' principle to fund these roads and more specifically to implement e-Tolling on GFIP roads. We already have a number of tolled roads in the province, which require motorists to stop at the respective toll-gantry and pay the fee required, before proceeding along the toll-road.

The new approach utilises advanced technology to 'recognise' the car and the driver responsible by means of either:

- an e-tag carried within the specific vehicle, which corresponds to an account opened by the person registering the e-tag; or
- via sophisticated camera technology that is linked to character-recognition software that uses the government national register of vehicles to 'recognise' the vehicle and its owner.

This allows vehicles to be charged for using the roads, without creating massive traffic jams on busy roads like those around Johannesburg and Pretoria. The user-pays principle tries to ensure that those using the roads, and causing wear and tear on such roads, pay for such usage appropriately.

As soon as it became clear what costs would be involved and which roads would be tolled, the decision to proceed with e-tolling resulted in extensive protests and public discontent. It led to an application to the court for an urgent interdict to halt the process. This was to prevail until a court could review the decision to implement e-tolling and its attendant costs. There were a number of marches and freeway blockages to protest this decision. The level of protest led to government reconsidering the cost of the tolls to be levied, and applying some exemptions for public transport on the freeways, while refusing to reconsider the whole e-tolling methodology. The interdict was won – and then later lost on appeal to the constitutional court (the court felt that the judge had gone beyond his powers as a judge). The review process continued and although the barriers to implementation had been removed, no action was taken to implement e-tolling. The review by the court took place in October and the objections to the e-tolling process failed. Permission to appeal was applied for and granted – and the appeal will be heard by the Supreme Court of Appeal later this year, probably around September.

### **What are the key moral issues underpinning this decision?**

#### **The Accountability of the Executive**

Government has a mandate to govern, by virtue of having won an election. Does this mean that they are unaccountable until the next election? Clearly not, but finding ways of actually holding government accountable between elections, becomes a critical concern in any democratic society.

Various pieces of legislation try to ensure that the concerns of the people are taken into account when implementing government policy. The environmental legislation stipulates certain consultation processes that have to be undertaken before development plans can be finalised. The Sanral legislation stipulates that certain public consultations must occur before plans regarding new roads are finalised. If these are not taken seriously, then the right of the people to hold Government accountable is impaired. If pressing objections are not heard, or are not taken seriously, or never emerge because the entire process is not designed to ensure that the appropriate climate is created (by giving enough information, by stimulating debate, by encouraging opposition to allow for a proper airing of the issues etc), then Government cannot be held accountable and the people's concerns will not be respected. This is one of the key issues that emerged during the GFIP implementation process and we are faced with correcting the mistakes that were made as a result of inadequate consultations.

Once government policy has been implemented, if the results of this implementation raise new concerns for citizens, there must be a way to ensure that, when appropriate, such concerns can still be heard and taken account of. The courts are sometimes the only way in which citizens can try and get government to rethink policies/activities that have already been implemented. There is clearly a big difference between the role of elected politicians and that of Judges. Judges cannot supplant the role of the politicians who were elected to run the country. They can however, in appropriate situations, provide a mechanism that allows citizens to enforce a re-think of the rationality of certain decisions / policies / government actions. This needs to be respected, and even welcomed, by politicians in a constitutional democracy.

#### **Taking due care when utilising funds appropriated from the people of the country**

When it appears that the cost of the solution being implemented by Government is highly inappropriate, or if it seems to be costing a disproportionate amount of money to implement it, or if there appear to be credible concerns about the rationale for choosing the specific solution being implemented, then it is the duty of all concerned people to find a way to raise these questions clearly and forcefully. The people have the right to raise such questions, and to continue raising them until they are satisfied that all reasonable issues have been addressed and resolved. Public funds are always in short supply when faced with the critical needs of a country such as ours, and it is thus incumbent upon Government to take the greatest

possible care in utilising these funds, and to address all reasonable concerns from the people of our country, regarding the appropriate utilisation of such funds.

The costing of this e-tolling exercise has raised many such questions and concerns - and this need to be appropriately addressed. It is not appropriate to brush them aside by citing the need for confidentiality. Such behaviour leads people to suspect that there must be something that Government is trying to hide; 'why else would they behave in this way?'

Transparency is one of the cornerstones of democracy.

### **How appropriate was the cost of the GFIP project?**

From what we have been able to ascertain so far, it appears that the GFIP project will incur capital costs of around R20.63 billion to construct and a further R20 billion in interest costs over 24 years (assuming an interest rate of 6.5%), thus totalling R40.66 billion to build and finance it. The e-tolling solution being advocated apparently costs around R1.7 billion to construct and a further R1.2 billion per year to implement, totalling around R30 billion over the 24 years of the project. This means that the cost of implementing the solution amounts to almost 74% of the total cost of the project! Under what circumstances would any rational custodian of public funds choose such a path? We are aware that experts from both sides have haggled about these costs for many months now, with the Sanral experts denying that these costs are as high as R30 billion, and experts from the opposition side arguing that these estimates are, if anything, too low.

The unfortunate levels of secrecy that have been adopted by Sanral and the Department of Transport, have led to a situation where it is virtually impossible to be certain of the facts in this case. At the very least both sides agree that tolling is definitely a more expensive way of paying for the roads than using the fuel levy or direct funding from the fiscus, they just disagree about how much more expensive it is. It is thus critical that this is carefully reviewed by an appropriate forum (the public protector, the auditor general or a judicial enquiry) that is given full access to the quotes, contracts and other documentation required to fully ascertain the facts of the matter. Until this happens, it makes no sense to implement what appears to be an absurdly expensive payment mechanism.

### **Were there any alternatives to raising the funds via e-tolling?**

The debates around this matter have continually made reference to the possibility of raising funds for road maintenance and upgrade via the fuel levy that is currently being imposed. The total amount being generated for National Treasury by the fuel levy is around R47 bn/yr. Parts of that fuel levy are already being used for a number of ring-fenced projects – the road accident fund and the multi-purpose pipeline between Gauteng and Durban. Assuming the GFIP project requires around R2.21 bn/yr for 24 years to pay for the GFIP and the interest costs, this could presumably be appropriated from that R47 bn being raised every year. Even if there are other more pressing needs (and here we would want to understand why funds raised via a proxy user-charge levy on fuel are not being dedicated to the pressing need to maintain and upgrade the country's critical infrastructural network) surely Government could simply raise the fuel levy on the 22 billion litres of fuel sold yearly in SA by a meagre 10.04 cents to allow treasury to raise the requisite R2.21 bn/yr.

Obviously this would have to be considered in the context of the whole picture; what other road upgrades/maintenance are needed and how will these be financed? What other plans are there for toll-roads and what will these cost to implement? And how will these, in the absence of e-tolling, be financed? All of this needs to be seriously and transparently considered, but the facts seem to provide good and pressing reasons to immediately call for a re-think of the solution being proposed.

### **The costs of the upgrades done during the GFIP – are they all above board?**

We have some serious concerns about the cost of the GFIP project. From the record this project appears to have gone through some fairly serious changes in cost levels.

It began with a rough approximation of the cost required of around R4.5bn for some 6X340 lane-kilometres of road in 2004 – or a cost of around R2.2million per lane-kilometre.

By 2006 the project had changed to cover only 8.6X185 lane-kilometres with a projected cost of R6.4bn - or a cost of around R4million per lane-kilometre – which was slightly less than double the previous cost.

By 2008 the road still covered the same lane-kilometres, but with a total projected cost of R11.8bn - or a cost of around R7.42million per lane-kilometre or around 3.4 times the cost projected in 2002!

By the time of the June 2012 appeal to the Constitutional Court, the amounts quoted (using 2011 figures) came to a total of R20.63bn – or a cost of around R12.37million per lane-kilometre or around 5.6 times the cost projected in 2002 and 67% higher than the cost projected in 2008!

These massive changes appear, on the face of it, to raise some fairly serious questions about what was going on during the life of this project. Does this indicate that some serious investigations need to be initiated regarding possible corruption? Regarding possible price-fixing? How does this look if we bear in mind the findings that emerged from the Competition Commission's investigations into the construction industry? At the very least, this should give us cause to demand some answers, and to suggest that the management of this whole project be put on ice until such time as adequate answers are given to these questions.

The rooting out of corruption is critical – but even more important is that it is done in the public eye – to make it perfectly clear that this will not be tolerated, and that systems exist to root it out. It is very important for such concerns to be widely and adequately aired and examined – so that our people are given the opportunity to see what has happened and how corruption is fought.

### **Is it reasonable to 'Privatise' existing public roads?**

There is great concern about the way in which existing public roads are being privatised. This stems partly from the appropriation of an existing freeway, which serves as the main arterial route within the economic hub of our country, to create a toll road. Whatever the pros and cons of tolling may be in general, it is difficult to justify the appropriation of an existing arterial route and especially when it is patently clear that no alternative routes exist. The heightened congestion on every other road around this route will surely create chaos and appears to be very unfair. Without wanting to enter into the debate on some fairly technical issues around traffic management, it appears to us that this approach is open to challenge on a range of fronts, and needs re-thinking.

### **What impact will this e-tolling have on the poor?**

It seems clear that anything that raises the costs of doing business in the core of our SA economy, will impact on the cost of living, and will disproportionately impact on the poor. The trade unions have made it clear that they believe this to be the case and it seems to us that business will pass this additional cost on to their consumers. This will inevitably hurt the poorest amongst us, at a time when there have been far too many attacks on their ability to survive. Once again we are faced with public spending on infrastructure that fails to address the desperate need for an integrated public transport system that is affordable. This provides yet another reason to suspend the GFIP e-tolling project, and to explore alternative methods of funding the roads that have been built or upgraded.

**We therefore call for the immediate suspension of the GFIP e-tolling project and a full-access review of it by an appropriate forum (the public protector, the auditor general or a judicial enquiry), and we appeal for a re-think regarding alternative methods of funding it.**

**We also call on all Catholics, all people of faith and all people of goodwill who are concerned about these issues:**

- To take the time to acquaint ourselves with the facts surrounding this project and the decisions made by Government in this regard. It is incumbent upon us to ensure that we understand the options and the alternatives.
- To come together to consider ways of taking this matter to our parishes and to our communities, and of showing the authorities how we feel.
- To support and collaborate with actions that are being taken on these issues by other organisations such as COSATU.
- Not to collaborate with the e-tolling procedures until all the matters of concern have been addressed appropriately.
- To assist in making government accountable to the people of our country, to assist in ensuring that public funds are utilised for the betterment of all our people.
- To expose and fight corruption in every sphere and on every front.

**We would like to publicly support the OUTA-led appeal regarding the Review application, which is due to be heard later this year in the Supreme Court of Appeal.**

**Message to all local groups in parishes and communities (Justice and Peace Groups, youth groups, women's groups, etc):**

This document gives us the background to the calls to action that are articulated above.

We need to use this document to mobilise all Catholics and people of goodwill to take action on these issues. This can be done by gathering people together to discuss the following questions:

- Do we understand and agree with the analysis and conclusions presented in this document?
- How can we take action, in our local community, to make it clear to Government, and to the whole community, that our governing authorities have to be accountable to the people they govern?
- What can we do locally to begin a process of exposing and fighting any corruption that we are aware of in our area?
- What organisations or clubs should we be talking to, in our local area, to build an alliance that is able to take joint actions to address e-tolling and local corruption?

Bishop Abel Gaba  
Chairperson

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Vice-Chairperson

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