



OUTA

ORGANISATION UNDOING TAX ABUSE

ANNUAL REPORT

2017 - 2018

THE OUTA CREDO

SOUTH AFRICA'S SOVEREIGNTY AND CONSTITUTIONAL
DEMOCRACY HAS BEEN HARD EARNED.

ITS BEAUTY AND ABUNDANCE OF NATURAL RESOURCES AND
DIVERSE CULTURAL HERITAGE ARE PRECIOUS TO US.

Our potential for higher prosperity is immense, and limited only by
those in authority who consciously choose to abuse their power,
joined by those who stand by and choose not to take action.

Corruption and cronyism are the products of leadership distracted
by greed and matters of self-interest.

Silently and steadily, this carves away at our nation's soul.
It disempowers the poor of their rights and access to decent
education, employment, health, housing and security.

We, the people, society and business, have two choices:
We can look away and do nothing.
Or we can take action and halt the decay.

AT OUTA, WE CHOOSE TO TAKE ACTION.

We do so without fear, through a focused strategy and motivated
team that holds accountable those in authority who ignore their
responsibilities and run roughshod over our Constitution.

OUTA

ORGANISATION UNDOING TAX ABUSE

Holding Government Accountable

www.outa.co.za

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THIS IS OUTA

OUTA'S VISION:

A prosperous country, free from the abuse of authority and governed with the efficient use of tax revenue.

OUTA'S MISSION:

To be a trusted vehicle for positive change, promoting and advancing the South African Constitution and other democratic processes by:

- Challenging the taxation policy and the regulatory environment, as and when deemed as being irrational, unfit or ineffective;
- Questioning and challenging the squandering, maladministration and corrupt use of taxes, using our clear and effective methodology, and then holding to account those responsible for wrongdoing.



MARCH 2012

Opposition to Urban Tolling Alliance (OUTA) is established by SAVRALA, RMI, SATSA, QASA, SANCU.

APRIL 2012

OUTA registers as a non-profit association with the Companies and Intellectual Properties Commission (CIPC), registration number 2012/064213/08, with a constitution and management and advisory committees. OUTA also registers as a Public Benefit Organisation (PBO) with SARS for income tax exemption (PBO registration number 930042651); this is not a Section 18A registration therefore OUTA is not in a position to issue S18A certificates.

APRIL 2012

The first directors are Wayne Duvenage, Paul Pauwen and Michael Tatalias.

JULY 2012

OUTA (Opposition to Urban Tolling Alliance) registers as a non-profit organisation under the Non-Profit Organisations Act of 2009, with registration number 124-381.

2014

Tatalias resigns to emigrate. Jeff Osborne is appointed as a director and leaves 19 months later.

NOVEMBER 2015

Ivan Herselman, Rob Hutchinson and Tiaan le Roux are appointed as directors. Herselman and Le Roux leave in October 2016, and Hutchinson in December 2017.

DECEMBER 2015

The first six permanent staff are appointed, which include the five directors.

JANUARY 2016

OUTA changes its name to the Organisation Undoing Tax Abuse and the constitution is updated to reflect the extended mandate. Oya Gumede is a director from February to December 2016. More staff are hired.

MARCH 2017

Rob Handfield-Jones is a director from March to July 2017.

MARCH 2017

Phumlani Majazi is appointed as a director.

APRIL 2017

Ferrial Adam is appointed a director and becomes the OUTA board's chairperson.

AUGUST 2017

OUTA updates its CIPC registration as a non-profit company (NPC) with a Memorandum of Incorporation replacing the constitution.

JANUARY 2018

Ben Theron is appointed as a director.

FEBRUARY 2018

OUTA has 41 fulltime staff.



OUTA ANNUAL REPORT 2017–18

INTRODUCTION

This is OUTA's annual report for the financial year running from 1 March 2017 to 28 February 2018.

In this report, we reflect on a year of expansion across the organisation, from staff to structure, from our supporters' contributions to the number of projects undertaken, and from the decisions to open a full-time Parliamentary Engagement Office in Cape Town to the start of a multi-branch local government network.

The past financial year was dominated by the growing exposure of state capture and the battle by society to bring an end to Jacob Zuma's presidency. Week after week, media headlines exposed new cases of plundering of state coffers and, throughout 2017, the calls from civil society to fight state capture and general corruption grew louder. Civic activism reached new heights on 7 April 2017, with huge public gatherings and marches – estimated around 200 000 people across South Africa expressing dissent against President Zuma. Another march by tens of thousands of protestors took place in Cape Town on 8 August 2017, calling on Parliament to vote in favour of a motion of no confidence in President Zuma.

The release of the #GuptaLeaks in May 2017 catalysed public anger, with the exposure of the extent and cost of state plundering by the Guptas and their cronies. The public outcry, combined with national credit rating downgrades, added to the pressure that culminated in Zuma's resignation in February 2018 as President of the country.

During 2017 and early 2018, parliamentary inquiries were established into ministerial conduct

and elements of state capture. Shortly after Cyril Ramaphosa's victory at the ruling party's December 2017 conference, the replacement of "captured" boards and executive managers at state-owned entities was underway. This new energy, combined with the reinstatement of corruption charges against Zuma and the law enforcement moves to charge the Guptas, gave the nation the beginning of the undoing of state capture and improved governance within the state, (or as President Ramaphosa puts it, a "New Dawn").

Much of OUTA's work over the past year is covered in this annual report. This includes a collaborative stance taken with other civil society groups such as FutureSA, SaveSA and the Freedom Movement, to oppose state capture.

OUTA continued to help defend multiple legal cases brought by SANRAL against e-toll defaulters. Our strategy to expand beyond e-tolls has seen the organisation grow both in its work and support we receive.

The appointment of new leadership within the law enforcement agencies is underway, and there is improved oversight from various parliamentary Portfolio Committees, so society can expect to see people linked to corruption and maladministration being held accountable in the coming years.

The decision taken by OUTA's executive in the past year to broaden the public's fight against corruption and maladministration to both the national and local government levels sets OUTA on track to become the largest effective civil intervention organisation in the country in coming years.

We are often asked what the outlook is for OUTA, now that a semblance of a return to good governance is underway, as it may appear that OUTA's existence depends on Government's failure. The short answer is that now, more than ever, civil society must not drop its guard. Corruption and maladministration have permeated all levels of Government, so the need to entrench a culture of accountability and good governance will remain essential for decades.

OUTA's long-term goal goes beyond challenging corruption and misspending of public funds. We believe that the National Treasury needs to pay attention to an overtaxed society. A desire to "ask for more" when government is wasting so much of what it gets, needs tackling. The unsustainable trend of policies which seek to increase the tax burden need assessing, failing which South Africa becomes less attractive for investment and its citizens get poorer.

OUTA intends to be more representative as a people's voice when it comes to holding municipal managers to account. Our new Local Government Programme will be spearheaded by Dr Makhosi Khoza and will address the pillaging of municipal coffers. This will offer organised society a voice at local government level, to ensure the interests of the people are always prioritised, not only every five years when the elections come around.



OUTA

CHAIRPERSON'S REPORT

SOUTH AFRICA IS A BEAUTIFUL COUNTRY WITH A RICH DIVERSITY OF CULTURES AND PEOPLE STEEPED IN A DEEP HISTORY. THIS BEAUTY HAS UNFORTUNATELY BEEN MARRED BY GROWING LEVELS OF CORRUPTION, INEQUALITY AND POVERTY. THE TOP 10% OF THE POPULATION EARN ABOUT 60% OF ALL INCOME AND OWN ABOUT 95% OF ALL ASSETS. THIS GLARING INEQUALITY EXACERBATES SOCIAL INJUSTICE.



Ferrial Adam, OUTA Chairperson

OUTA shines a spotlight on growing corruption, lack of accountability and misuse of public funds.

The past year was a tumultuous one for South Africa, culminating in a changing of the political guard, with Cyril Ramaphosa's election first as the ANC president in December 2017 and then as South Africa's President in February 2018.

While this was long overdue, there is still a lot of work needed to release the economy from the stranglehold of state capture and address the growing levels of poverty and injustice. Under Jacob Zuma, South Africa declined in virtually every aspect of governance and performance,

from security to health, education, housing and job creation. By the end of 2017, the country was in a state of depression, with many feeling helpless as the Business Confidence Index and general feeling of prosperity dropped to the lowest levels since the dawn of democracy almost 25 years ago.

The "capture" of the National Prosecuting Authority and the Directorate for Priority Crime Investigation (the Hawks) enabled the mechanisms of state capture to go relatively unchallenged, so corruption within the state and its business entities reached critical proportions. In November 2017, the Auditor General reported irregular expenditure by government departments and state-owned entities had ballooned to around R46 billion during 2016/17, although the count was still ongoing. There's no clear count of the total cost of state capture, although Pravin Gordhan has said that some estimates reach as high as R100 billion.

Against this backdrop of rampant state corruption and maladministration, OUTA's mandate was updated in February 2016, taking the organisation well beyond the e-toll debacle. Now six years old, OUTA has reached remarkable heights. Supporter donations are growing and OUTA has become an increasingly influential civil action organisation, thanks to its tough approach to tackling those in authority who abuse their power and waste the hard-earned revenues generated for the National Treasury.

OUTA's new structure delivers

At the end of 2016/17, OUTA introduced new project management methods and organisational updates, which improved productivity. This led to a substantial growth in the number of new projects, with 58 new projects in 2017/18 compared to 18 the previous year.

The ability to do more obviously comes from a growth in supporter donations, which enabled OUTA's leadership to expand the team from 32 to 41 staff during 2017/18. The more we receive in donations, the more the organisation can do for the country.

By the end of 2017/18, OUTA was running these main portfolios: State Capture, Transport, Energy, Water and Environment and Special Projects.

Sustainability and governance

The sustainability of OUTA is a constant focus for the board. This is driven particularly by:

- The growth of **supporter donations**, which provide continuity of revenue;
- **Leadership** and talented staff who focus on OUTA's strategic goals;
- Good **governance** which ensures OUTA's policies, procedures and risk assessments are in line with its long-term mandate and its Memorandum of Incorporation.

Each of these elements received significant attention over the past year. OUTA's board emphasised governance, which is particular-

ly challenging as OUTA has grown from a staff of three to 41 over two-and-a-half years. Whilst reviewing and expanding OUTA's internal policies and procedures, OUTA's board decided to move as close as possible to the full adoption of the King IV Codes of Good Practice (specifically the sections relevant for the NGO sector). This began with an assessment of the organisation's governance by the Institute of Directors in Southern Africa (IoDSA) in late 2017, which established that OUTA had most matters covered for an organisation of its size. Areas needing additional attention to be King IV compliant included risk management and various internal committee structures.

A team of thousands

On a personal note, as an activist, I am constantly amazed not only by the commitment and passion shown by OUTA staff and executives, but also by the thousands of supporters. This combination of people and support is definitely an important part of the organisation's success. OUTA has been punching above its weight with knockout precision.

In acknowledging that, I would like to end with the words of Archbishop Emeritus Desmond Tutu: *"Do your little bit of good where you are; it is those little bits of good put together that overwhelm the world."*

Ferrial Adam

OUTA Chairperson



CEO'S REPORT

THE YEAR ENDING FEBRUARY 2018 WAS ANOTHER REMARKABLE YEAR FOR OUTA, DUE TO THE GROWTH IN SUPPORTER BASE, THE SUBSEQUENT INCOME FROM OUR DONORS AND THE INCREASING NUMBER OF PROJECTS UNDERTAKEN WITH THE RESULTING EFFECT ON SOCIETY.



Wayne Duvenage, OUTA Chief Executive Officer

OUTA's effectiveness relies on the employment of competent, highly-energised people with positive attitudes and direction from a focused leadership team. This team, combined with efficient systems and good governance, enables OUTA to continue to challenge corruption effectively.

OUTA's portfolios (State Capture, Transport, Energy, Water and Environment, and Special Projects) expanded their ability to tackle more projects, while the functional departments (Legal, Research, Investigations and Communication) increased capacity to provide expertise and support.

Efficient structures improve productivity

OUTA's growth in the number of projects undertaken during 2017/18 (58 new projects compared to 18 in the previous year – an increase of 220%), was a significant achievement for the team. This was partially attributed to OUTA's

growth in headcount: personnel grew by 59% (from an average of 22 staff in 2016/17 to 35 in 2017/18).

To undertake a 220% increase in projects with a 59% growth in headcount, shows a significant increase in productivity and improved efficiency. An efficient human resources structure is crucial for project management work, which is why we completed an externally-facilitated restructuring process in the third quarter of 2016/17, to enable OUTA to transcend its structural impasse and implement our new, highly-effective project and portfolio management structure.

Holding hands with broader civil society

2017 was a year like no other in our young democracy, with the largest representation of society demonstrating against a corrupt government and, in particular, against President Jacob Zuma.

On 7 April 2017, South Africa saw the largest number of protestors across all sectors of society take to the streets in major cities and towns. The display of anger against Zuma's cabinet reshuffle – which saw Pravin Gordhan and Mcebisi Jonas removed from the finance ministry and replaced with Zuma's state capture stooges – profoundly concerned citizens. In August 2017, more protests arose after the formation of FutureSA, as the public called on Parliament to vote to show their lack of confidence in Zuma as President.

OUTA participated in these initiatives, demonstrating our willingness to join hands with a broader coalition of civil society groups that aimed to heighten the awareness of the nation's plight and levels of corruption under the rule of Jacob Zuma.

Financial controls

We are mindful of the fact that the money we use is donated by the public, hence the need for strict governance. OUTA's expenditure is governed by established limits of authority. Expenses are contained to 'only what we need', while management controls ensure that the finance department tracks all expenses and income.

Our supporters rock

2017 was a depressing year for South Africa. As levels of anger and desperation rose throughout the country, OUTA's supporter base continued to grow – reinforcing our belief that our work brings hope and makes a difference in the fight against corruption and maladministration.

I would like to thank every supporter for every rand donated to OUTA. It is your contribution, no matter how small, that make a massive difference to our ability to function. Our work is complex, yet our aim is simple: to make those who waste our tax money feel the consequences of their conduct. And the more donors we have, the more effective we can be.

Set for growth

OUTA evaluates its structure and areas of focus continuously, to meet new challenges and confront the evolving dynamics of corruption and maladministration. We have our work cut out, for a very long time.

Despite recent changes in South Africa's political landscape, with new leaders taking an anti-corruption stance, OUTA is aware of the depth and breadth of corruption within state structures,

along with a challenged ability for Government enforcement to tackle the problem.

There has been a more co-operative approach from government institutions, as a return to improved governance begins to infiltrate the enforcement departments which were decimated during Zuma's rule.

The "New Dawn" needs OUTA to engage more with Government and develop its ability to provide more input, research, facts and insights, to fight the war against corruption. It also means that OUTA will become a more trusted receiver of whistleblower information and, in time, will participate more in Government policy setting, and the drive for improved governance, more effective tax policies and improved administration.

OUTA's new frontier in the coming year has already begun: developing and driving our new Local Government Programme, as we extend our proven model for holding authorities to account, into local municipalities.

Wayne Duvenage

OUTA Chief Executive Officer

OUTA

OUTA'S BOARD

from 1 June 2018



Ferrial Adam
Chairperson
NON-EXECUTIVE DIRECTOR
Appointed April 2017



Wayne Duvenage
Chief Executive Officer
EXECUTIVE DIRECTOR
Appointed April 2012



Paul Pauwen
EXECUTIVE DIRECTOR
Appointed April 2012



Phumlani Majazi
NON-EXECUTIVE DIRECTOR
Appointed March 2017



Ben Theron
Chief Operating Officer
EXECUTIVE DIRECTOR
Appointed January 2018



Dr Makhosi Khoza
Head of Local Government
Programme
EXECUTIVE DIRECTOR
Appointed 1 June 2018



Advocate Stefanie Fick
Head of Legal Affairs
EXECUTIVE DIRECTOR
Appointed 1 April 2018



Simi Pillay van Graan
NON-EXECUTIVE DIRECTOR
Appointed 1 April 2018



Wyna Modisapodi
NON-EXECUTIVE DIRECTOR
Appointed 1 April 2018

OUTA'S BOARD ATTENDANCE REGISTER

| DIRECTORS' ATTENDANCE AT BOARD MEETINGS | | | | | | | |
|---|--------------------------|-------------------------|---------------------|-----------------------|---|--|------------------------|
| DIRECTOR | Q1 MTNG 21 April 2017 | Q2 MTNG 23 June 2017 | AGM 23 June 2017 | Q3 MTNG 2 Oct 2017 | EXTRA ORDINARY MTNG 7 Nov 2017 | EXTRA ORDINARY MTNG 15 Dec 2017 | Q4 MTNG 19 Jan 2018 |
| Ferrial Adam | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Wayne Duvenage | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Rob Handfield-Jones | Yes | Yes | Yes | Resigned | | | |
| Rob Hutchinson | Yes | Yes | Yes | Terminated | | | |
| Phumlani Majози | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Paul Pauwen | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Ben Theron | | | | | | | Yes |

OUTA's Directors

As at February 2018

Ben Theron

Chief Operating Officer
EXECUTIVE DIRECTOR
Appointed January 2018

Wayne Duvenage

Chief Executive Officer
EXECUTIVE DIRECTOR
Appointed April 2012

Ferrial Adam

Chairperson
NON-EXECUTIVE DIRECTOR
Appointed April 2017

Phumlani Majози

NON-EXECUTIVE DIRECTOR
Appointed March 2017

Paul Pauwen

EXECUTIVE DIRECTOR
Appointed April 2012



OUTA

OUTA'S GOVERNANCE JOURNEY

OUTA HAS COME A LONG WAY SINCE ITS INCEPTION AS THE OPPOSITION TO URBAN TOLLING ALLIANCE IN EARLY 2012, WHEN IT WAS FORMED AS A NON-PROFIT ASSOCIATION REGISTERED WITH THE CIPC BY A HANDFUL OF BUSINESS ASSOCIATIONS, TO INTERDICT AND CHALLENGE THE GAUTENG URBAN FREEWAY E-TOLL DECISION.

In 2012, OUTA had a constitution, three directors and an advisory committee of representatives of the associations that united against the e-tolls under the OUTA banner. Board meetings were held quarterly and the annual reporting consisted of a Chairperson's report and audited financials. Two of the directors (Wayne Duvenage and Paul Pauwen) operated from their homes as volunteers for two years. All the funds raised were used to settle the expensive legal bills and the (very few) out-of-pocket expenses. Finances were managed by a secretarial and auditing company.

All the directors had previous trade association and corporate experience and ethics were emphasised. The public's trust in the integrity of OUTA was, and always will remain, paramount.

After the December 2013 e-toll launch, two part-time team members were contracted to assist with communication and writing.

In December 2015, the first fulltime staff were hired.

In early 2016, OUTA's mandate was broadened to tackle government corruption and maladministration and the name changed to the Organisation Undoing Tax Abuse. The organisation grew rapidly over the following two years to more than 40 staff by February 2018.

The challenge was to ensure that our governance keeps pace with the changing demand. This required moving on from the original handful of consulting agreements and letters of employment to developing a full set of policies and procedures. A code of conduct and a human re-

sources policy were introduced in 2016, followed by policies on communications, travel, remuneration, finance and limits of authority, as new departments and layers of management were introduced. All directors' salaries are approved by the Board and all staff salaries by the CEO.

In 2016, OUTA produced its first full annual report covering operations, projects and plans.

By the fourth quarter of 2016 a new project management structure was implemented, with portfolio managers who take responsibility for specific sectors.

In mid-2017, an external tax and compliance specialist was brought in to help with changing from using a constitution to a formal Memorandum of Incorporation (MOI) in compliance with the Companies Act.

The expansion gave rise to new tiers of management and changes within the leadership structures and ensured tax compliance.

By the end of 2017/18, OUTA was governed by a board of five directors: three executive directors (Wayne Duvenage, Paul Pauwen and Ben Theron) and two non-executive directors (chairperson Ferrial Adam and Phumlani Majozi). By early 2018/19, it is expected that the board will expand to have an equal number of executive and non-executive directors.

The functions of Chairperson and Chief Executive Officer (previously positions both held by Wayne Duvenage) were separated, with the chairperson role now assigned to a non-executive director (Ferrial Adam) and Duvenage



heading up the executive team as the CEO. Ben Theron was promoted to Chief Operating Officer in mid-2017 and as a director in January 2018. Paul Pauwen is the director responsible for governance and policy.

Below the board is the executive committee (Exco), responsible for day-to-day management. By the end of the year, Exco was composed of the three executive directors (Duvenage, Theron and Pauwen), head of legal Stefanie Fick and Julius Kleynhans, who by then was the organisational development manager.

Board meetings continue to be held quarterly and Exco meetings take place weekly. Monthly operations management reports are produced and discussed with department heads.

In mid-2017, six of OUTA's management team attended a King IV Codes of Good Governance master-class training programme. In late 2017, the Institute of Directors of Southern Africa (IoDSA) was engaged to assess and report on OUTA's governance in terms of the King IV Code. The report, received early in 2018, tells us: "The

nature of the organisation requires courage and risk-taking and the Board appears to do so in a considered and responsible manner", and "The Board is transparent about its governance role and responsibilities".

In early 2018 the Board took a unanimous decision to implement the King IV code of governance to the maximum extent possible, and the process is on track for completion in the second quarter.

"Governance compliance is an ongoing process and one that doesn't come with an 'on-off switch', but instead, requires sustained work and focus," says Duvenage. "Attending to policies, procedures and governance processes in a rapidly expanding organisation takes a lot of effort, as does attending to the changes in organisational structure and personnel. All of this stretches our people and brings about growth opportunities for some, along with churn and new talent to take the organisation to greater heights. It's all part of the exciting journey that has seen OUTA become, in a short time, a leading and well-respected civil action organisation."

OUTA

OUTA'S METHODOLOGY

OUTA uses a five-step methodology:

STEP 1

Research and investigate:

This involves assessing an issue and deciding whether to pursue it.

STEP 2

Engaging the authorities:

Engagement provides an opportunity for those implicated to respond, explain, rationalise or rectify.

STEP 3

Exposing the authorities:

Should engagement fail, we will expose the matter and those implicated to the public, media and authorities to create pressure to rectify the situation.

STEP 4

Mobilisation:

Mobilising public support further highlights the issue and again places pressure on the perpetrators to rectify the situation. Mobilisation may include media releases, public protests or pressure on oversight bodies.

STEP 5

Litigation:

The last resort is to use the law to correct the matter through opening criminal cases, litigation, mediation and arbitration.

HOW OUTA WORKS

OUTA aims to hold Government accountable over its spending and management of state resources.

We do this by monitoring Government and building cases aimed at challenging poor governance and corruption. To do this, we maintain a litigation provision.

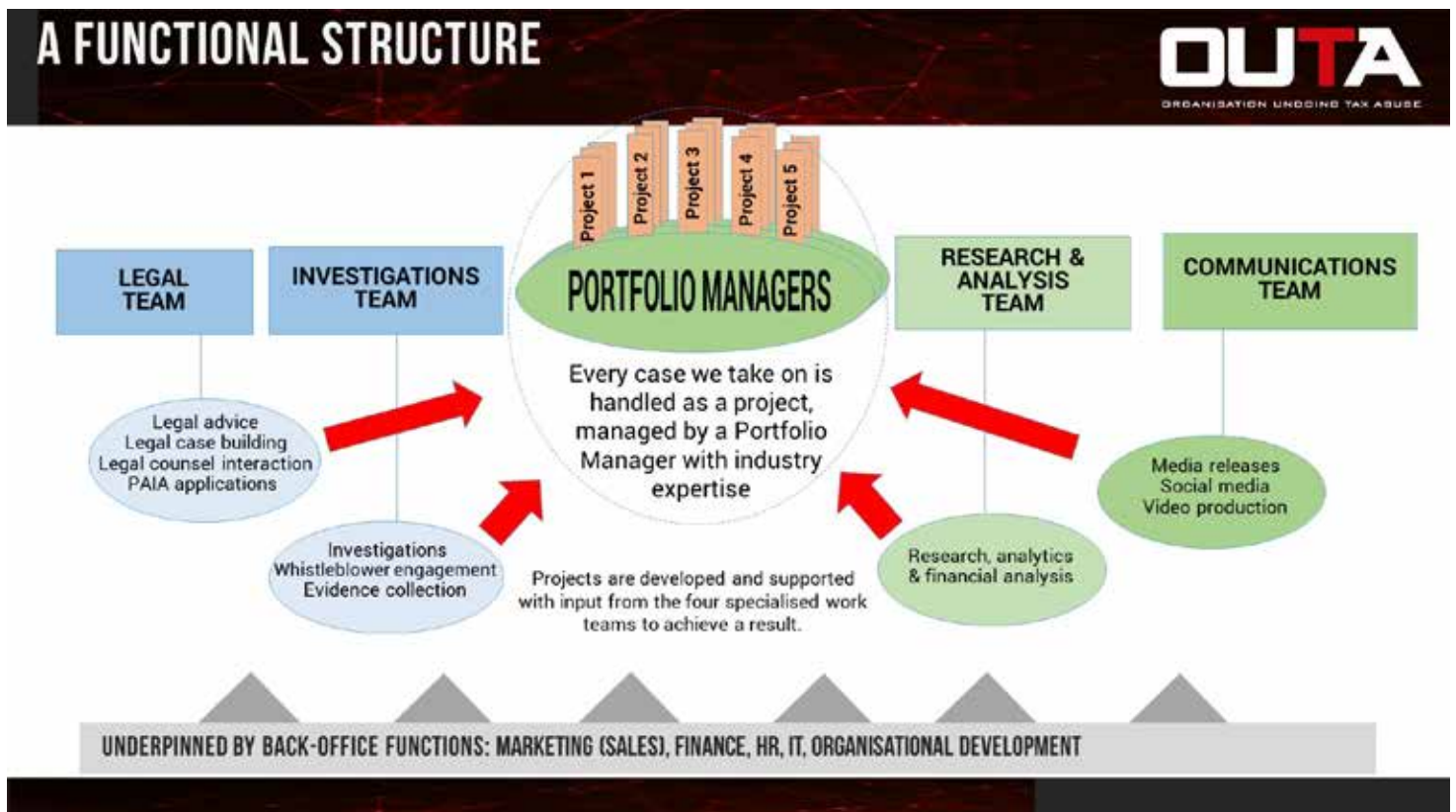
We employ leaders, researchers, investigators, lawyers, project managers and marketers. Hiring our own researchers, investigators and lawyers helps us limit the costs of litigation, although we may still have to hire outside legal assistance such as senior counsel. OUTA's work is overseen by portfolio managers who set policy and provide direction on the main issues which the organisation takes up. Each portfolio oversees a number of projects (the case files) on specific issues. The departments – where most of the OUTA staff are based – work on these projects, in consultation with the portfolio managers.

The portfolios are:

- State Capture, headed by Ben Theron;
- Transport, headed by Rudie Heyneke;
- Energy, headed by Ronald Chauke who took over early in 2018;
- Water and Environment, headed by Julius Kleynhans and now by Siqhamo Yamkela Ntola;
- Special Projects, headed by Dominique Msibi;
- Parliamentary Engagement, actioned by Matt Johnston;
- OUTA Local Government Programme, headed by Michael Holenstein and to be managed by Dr Makhosi Khosa from June 2018.

The portfolio managers are supported by OUTA’s functional departments:

- The Research and Analysis Department, headed by Erin Klazar;
- The Investigations Department, headed by Erich Neethling;
- The Legal Department, headed by advocate Stefanie Fick;
- Communication and Marketing was split into separate functions and, from February 2018, managed by Lois Moodley (Communication) and Roy Bingham (Marketing).



OUTA

RESEARCH AND ANALYSIS DEPARTMENT

OUTA's Research and Analysis Department has seen positive development and growth over 2017/2018. It consists of a team of individuals with qualifications including financial auditing, research psychology, environmental studies and information studies.

The research team acts as a support service to all departments and portfolios in OUTA. This is a dynamic and diverse team of dedicated individuals who welcome the challenges of having to work across multiple focus areas, including major projects in energy, transport, environmental issues, social services and state capture.

"Research is formalised curiosity. It is poking and prying with a purpose."

Zora Neale Thurston

This team uses a mix of desktop-based research of public and academic sources, together with information garnered from whistleblowers via OUTA's Investigations Department.

This research contributes extensively towards a multitude of projects, including the unpacking of the state capture cases and the processing of information from the #GuptaLeaks database for OUTA's "No Room to Hide" dossier. By the end of 2017/18, the team was involved in continuous preparation for the state capture inquiry expected during 2018.

The Research Department has also worked on an extensive analysis of the financial status of state-owned entities, engaging since October 2017 with investment houses and chambers of commerce, to open the dialogue to the financial realities of large organisations like Eskom and Transnet. Major research projects for the year include assessing wasteful expenditure through poor management of disciplinary processes in government departments, the state of the criminal justice system and research into construction cartels and concessionaires. Furthermore,

the Research Department has worked closely with OUTA's Parliamentary Engagement Office, offering content to submissions and engagements with parliamentary committees, which ultimately affect government policy. Research around government policy includes taking a closer look at the structures and risks surrounding the proposed National Health Insurance, the adjustments to the national fuel levy and further engagement on the national fiscus and budget decisions.

The department has been strengthened by dedicated engagement with academic institutions such as the University of Pretoria, the University of Johannesburg and Wits Business School, research bodies such as the Human Sciences Research Council (HSRC), consultants and journalists, foundations and investigation specialists. As OUTA moves into the local government space in 2018, the skills of the staff and the relationships built will form a crucial foundation for tackling issues of corruption and maladministration at local government level.



INVESTIGATIONS DEPARTMENT

The Investigations Department plays an important role as part of the greater OUTA family. The purpose is to take on cases which fall within the OUTA mandate. This firstly requires the utmost dedication, management and protection of whistleblowers who are as passionate about bringing the truth to light as we are. The Investigations team gathers evidence which can be used to expose the rot as well as lay the foundation for charges to be pursued against wrongdoers. Not only do we focus on past occurrences but we also aim to uncover and prevent corruption and abuse of state revenue and resources.

OUTA is an expanding organisation and this is also the case within the investigative space. OUTA's investigators between them hold multiple tertiary qualifications and have more than 100 years of experience across various disciplines which include vetting, project management, procurement management, data analytics, fraud, risk management as well as combating a range of crimes in the public and private sector, including serious financial crimes, money-laundering, smuggling, rhino poaching, cross-border crimes, white-collar crimes, various types of fraud and theft, procurement fraud, and commercial crime syndicates.

2017 was a very exciting year for OUTA as our investigations were central to the findings in our "No Room to Hide" parliamentary submission and associated criminal charges brought against state capture actors. OUTA investigates a range of matters, which include allegations of state capture and the abuse of resources across local and national government, with special emphasis on state-owned entities and activities within the energy, transport and water sectors.

The outcome of our work includes:

- Helping prepare dockets for laying criminal charges;
- Helping to obtain mandamus rulings (a court order to force the authorities to do their jobs);



- Assisting in obtaining Anton Piller search warrants, which are private search and seizure orders;
- Helping to obtain private asset-freezing orders locally and abroad, including the interim interdict freezing of R1.75 billion in the Gupta-owned Optimum and Koorfontein coal mines rehabilitation trust fund accounts;
- Assisting with private prosecutions, which are a last resort, but OUTA is geared to take these on;
- The statutory reporting of suspected crimes, which can also be registered in foreign territories since most corruption, tax evasion and money-laundering crimes are considered extra-territorial in execution. This means that other countries' law enforcement agencies may well be able to act when our own choose not to;
- Helping compile cases against the legal practitioners, accountants and auditors who may have aided and abetted crimes;
- Assisting with the international reporting of some cases;
- Assisting oversight bodies such as the Companies and Intellectual Properties Commission (CIPC), the SA Institute for Chartered Accountants (SAICA) and others, to bar perpetrators from future appointments as directors, or from practicing as chartered accountants and auditors.

OUTA

LEGAL DEPARTMENT

At the outset of OUTA's expanded mandate to go beyond the e-toll saga, the directors recognised the need to build legal cases quickly and at low cost. This was the main reason OUTA introduced its own team of legal experts, headed up by an experienced advocate.

OUTA's Head of Legal Affairs is Advocate Stefanie Fick, who has recently been appointed as an Executive Director on the OUTA Board. Her legal team includes two legal managers and an administrative assistant, two additional legal advisors and, closely linked to the team, are two legal consultants appointed by Alet Uys Attorneys, who manage the e-toll cases on behalf of OUTA's supporters.

The team members have between them nine legal degrees with expertise in a range of law, including criminal law, constitutional law, corporate and commercial law, family law, labour law, administrative law, property and public law, litigation and alternative dispute resolution.

This specialised unit works closely with the various portfolio managers, researchers and investigators to achieve OUTA's objectives, ultimately providing OUTA with 'teeth' for the bite required to hold individuals and entities accountable for corruption, fraud and gross maladministration. Every project we embark on needs to be developed to litigate or lay charges. This means that case building in the manner and format required for our affidavits to be fit for legal presentation, begins early on with each project. Added to this, is the compilation of Promotion of Access to Information Act (PAIA) requests as well as letters to senior officials within Government structures.

OUTA typically uses both criminal and civil mechanisms to achieve this goal.

For example, after receiving a report from the Research or Investigations teams, OUTA's Legal Department will draft criminal complaints and lay the criminal charges with the SAPS. We also institute complaints against legal practitioners,

accountants and auditors implicated in such complaints, or who may have aided and abetted these crimes, whether locally or abroad.

In OUTA's bid for civil justice, the Legal Department largely prepares and institutes civil proceedings, including mandamus applications (amongst a range of other mechanisms) to compel the authorities to comply with their legally required duties. Furthermore, OUTA assists oversight bodies such as the CIPC, SAICA, IRBA and other bodies, in its quest to prevent perpetrators from obtaining future appointments as directors or to fulfil specialised and professional functions within their respective fields.

To keep up with the ever-evolving nature of the organisation and our supporters' needs, OUTA has expanded to include commentary and public participation in the legislative drafting process. In addition, the legal team provides insight into that process to assist parliamentary portfolio committee inquiries.

The Legal Department will also provide legal support to OUTA's new initiative on local government. This team ensures that OUTA adopts an innovative approach to holding government accountable and evolving public law to protect our country.



COMMUNICATION AND MARKETING



We use traditional and new media to keep OUTA's supporters up to date on our work. You will find us on our website, on Twitter, on Facebook, Instagram, LinkedIn, YouTube and even on the Gauteng bridges. See the last page of this report for our contact details.

OUTA's website, which records our organisation's history and work, had a makeover and grew the number of unique visitors. During 2017/18, there were 1 019 462 page views of our website.

We send our donor supporters a newsletter every month and published 151 media statements during the year. We held 71 protests on Gauteng bridges, or outside key events such as the hearings on the Esidimeni tragedy and the first appearance of the Guptas in court. These protests are usually groups of less than 16 people, as these pickets do not require official permission.

On our social media accounts, we aim to respond to as many messages as possible, as we find that our supporters – and sometimes our detractors – appreciate engaging with us publicly. On Facebook we grew from 87 000 followers to more than 141 000 during 2017/18. On average, we reach nearly 49 000 people each day and the average number of shares per post per day is 594. Our Twitter account has more than 32 000 followers. We

tweeted 11 950 times, and our tweets were displayed about 38 200 000 times on other people's accounts in 2017/18. Our Twitter profile was visited 297 700 times during the year and OUTA was mentioned 80 886 times on Twitter.

Our newest social media platform is the photo-sharing platform, Instagram. We launched this in August 2017 and by early 2018 had more than 600 followers. Our Instagram account aims to remind us what South Africa can be, celebrating our unique and beautiful country. The most frequently used hashtags include #letsfixSA and #doyourbit.

OUTA's Marketing team deals with supporter relations, dedicated to providing exceptional service to our valued donors, whose contributions enable us to do our work. Supporter queries – by telephone, email and social media – increased by a massive 90% during the year.

During 2017/18 the number of OUTA's donors increased by 22%, which we believe was mainly due to support for our "No Room to Hide" dossier on state capture, our opposition to electricity price increases and to the ongoing fight against the e-tolls. OUTA's donor supporters are tens of thousands of individuals and businesses, who are passionate about seeing an improvement in the state of our country.

OUTA

PORTFOLIOS & PROJECTS: STATE CAPTURE



Ben Theron, OUTA Chief Operating Officer

Overview

- In June 2017, OUTA published “No Room to Hide”, a 1 098-page legal dossier on state capture, explaining why Jacob Zuma was not fit to be President, which was handed to Parliament. Largely arising from this report, OUTA opened 11 criminal cases with the police with charges against those implicated including treason, corruption and fraud.
- OUTA filed a complaint with the Registrar of Banks, which added to pressure to shut down the Gupta bank accounts and hold the Bank of Baroda and the State Bank of India responsible for the management of these accounts.
- OUTA won the temporary freezing of R1.9 billion in two mining rehabilitation funds linked to the Guptas to prevent these funds from disappearing.

This portfolio is headed by Ben Theron, OUTA’s Chief Operating Officer.

It’s the portfolio which involved a considerable amount of work by the support departments, Research, Investigations, Legal and Communications. This portfolio also involved coordination and assistance from the other portfolios, due to the overlap of work.

“State capture” involves the manipulation of public office bearers and Government decision-makers by key individuals – often acting as a coordinated group – with the intention of diverting state funds ultimately for their own benefit. In South Africa, it has resulted in the loss of billions of rand in state funds.

The “State Capture” report in November 2016, by then Public Protector Thuli Madonsela, meant that 2017 became a tipping point for civil society and democracy across all sectors. In May 2017, the “Betrayal of the Promise” report by the Public Affairs Research Institute (PARI) and the South African Council of Churches (SACC) “Unburdening Panel” further lifted the curtain on state capture. This was followed in May/June 2017 by the start of the #GuptaLeaks, with media organisations such as AmaBhungane, the Daily Maverick, News24 and the Times group exposing the extent and nature of state capture by the Gupta family and the associates of then President Jacob Zuma.

OUTA received a copy of the #GuptaLeaks and it was on these foundations that OUTA, working with some of the organisations exposing state capture, developed the document named “No Room to Hide: A President caught in the Act” and, on 28 June 2017, submitted this to Parliament. This was aimed at assisting Parliament to exercise its constitutional obligation to hold President Zuma and his Cabinet accountable.

“It is essential for a strong democracy to have active citizens. At OUTA, we believe that active citizenship involves people going beyond their day-to-day lives, participating in various activities to make a difference in people’s lives.”

Ben Theron, OUTA Chief Operating Officer



The document outlined the major state capture activities believed to link back to the Presidency. It is being used in several parliamentary inquiries now underway and will be submitted to the Commission of Inquiry into State Capture. Copies were also provided to the Chief Whips of every political party represented in Parliament, all MPs, the Ministry of Police, the Hawks policing unit (the Directorate for Priority Crime Investigation), the National Prosecuting Authority (NPA) and the Public Protector. A full copy (175 pages plus another 923 pages of annexures) was published on OUTA's website. This report is essentially a legal case file, which compiles information which was publicly available plus crucial additional information from the Gupta e-mails and turned it into a case file as a basis for prosecution.

The Speaker's Office referred the "No Room to Hide" report to five parliamentary committees: the Portfolio Committees on Transport, Public Enterprises, Home Affairs, Mineral Resources and Communications. The first four were setting up inquiries into allegations of state capture against members of the executive and organs of state. On 25 July 2017, OUTA's team briefed the Portfolio Committee on Public Enterprises' inquiry into the state capture of Eskom, along with the SACC and PARI's State Capacity Research Project (see the Energy Portfolio section below).

OUTA used the "No Room to Hide" document, along with other investigations including information from the #GuptaLeaks, as a basis for complaints to various authorities and for legal action, targeting those implicated in state capture and massive corruption. This involved various actions, including: laying criminal charges against identified individuals; bringing action against the Guptas' banks; getting involved in a legal action aimed at ordering the police and prosecution services to do their jobs and investigate corruption at PRASA; and freezing mine rehabilitation funds to stop them being looted. The legal actions are still going through the courts. The criminal cases have been referred from the SAPS to the Hawks and were still under investigation at the end of the year; OUTA has been in contact with law enforcement agencies over these matters to offer additional support.

The criminal charges were laid against a range of individuals, starting in June 2017. OUTA laid 11 criminal cases with the police against 22 people, including three serving Cabinet ministers, the President's son Duduzane Zuma, the three Gupta brothers and five Eskom officials, on various charges including treason, corruption and fraud.

OUTA took on the Guptas' bankers, complaining in July 2017 to the Financial Intelligence Centre

OUTA

and to the Registrar of Banks at the Reserve Bank of South Africa about the Bank of Baroda and the State Bank of India apparently failing to comply with the banking laws and regulations over the Gupta accounts. These were the last two banks servicing the Guptas. On 25 July, the Registrar of Banks told OUTA the complaint would be followed up; the same day, the Guptas told their employees that the Bank of Baroda was closing their accounts. By February 2018 the Bank of Baroda – the last remaining Gupta banker – was trying to close its South African operation, apparently as a way of closing the Gupta accounts.

On 31 July 2017, OUTA brought an application in the Pretoria High Court, asking permission to intervene in an existing case brought by the outgoing board of the Passenger Rail Agency of South Africa (PRASA) against the Hawks and the NPA. The PRASA board wants the court to order the Hawks and NPA to do their jobs (this is a mandamus application) by investigating and prosecuting the massive corruption at PRASA. OUTA applied to join the matter, to strengthen the case and ensure it would not be dropped when that board left office. Central to the case are allegations against former PRASA CEO Lucky Montana over the multi-billion rand contracts for Siyangena and Swifambo from 2009 to 2013, detailed in investigations by the Public Protector and also by the then PRASA board. This matter is due in court during 2018.

On 21 September 2017, OUTA filed a civil case aimed at rescuing the two mine rehabilitation funds linked to Optimum Coal Holdings, for Optimum and Koornfontein mines. These funds were worth about R1.75 billion at the time (this later grew to at least R1.9 billion) and are for the benefit of South Africa, but which had been moved into the Bank of Baroda under Gupta control and were in danger of being looted. OUTA won an interim interdict temporarily freezing these funds, in a significant win against state capture. The Guptas are opposing this and the matter is due in court in May 2018.

Further investigations include allegations of corruption at SARS, Transnet, Eskom, PRASA, SAA and Denel.

By the end of 2017/18, OUTA had started work on a submission to the new Commission of Inquiry into State Capture for later in 2018. In February 2018, OUTA wrote to President Cyril Ramaphosa asking for an amendment to part of the regulations for this inquiry, due to concern over the wide block on using evidence from the inquiry in subsequent criminal proceedings; weeks later the regulations were amended.

OUTA is proud to have been a part of the movement that saw many of these individuals identified as implicated in state capture and organised corruption. Building such cases is slow work and getting them through the legal system even slower, but OUTA believes this is worth pursuing as it gets these matters on record and adds to public pressure for action to be taken against those implicated.

At the beginning of 2017, state capture was largely ignored by the authorities, but by February 2018, state capture was an established reality which dominated 2018 news coverage, with increasing public anger, the establishment of parliamentary inquiries, the resignation of a President, the flight of the Guptas from South Africa, the departure from public positions of some key figures, the start of action by law enforcement agencies, the establishment of the Commission of Inquiry into State Capture and the beginning of a clean-up of state-owned entities.

However, there is still much more work that needs to be done to repair the damage of state capture. We will continue our journey down the path of active citizenry, with a growing hope and energy that together we can uphold the values of our constitutional democracy.



"The Hawks have assured us they are taking the cases seriously."

Ben Theron, OUTA COO

OUTA

PORTFOLIOS & PROJECTS: TRANSPORT



Rudi Heyneke, OUTA Portfolio Manager for Transport

Overview

- OUTA provides an E-toll Defence Umbrella which helps with legal assistance for motorists, arising from SANRAL's actions over unpaid e-toll bills, which includes 576 cases. This aims to help defend each individual case and to challenge the overall legality of the e-toll system. The test case is being compiled as the first case to be defended.
- OUTA made detailed submissions on the AARTO Amendment Bill, lobbying to improve this legislation from a primarily money-making scheme to a crucial defence of road safety.

The e-tolls: waiting in court

At midnight on 3 December 2013, the e-tolls went live. OUTA was first formed in 2012 specifically to oppose the e-tolls and, while the organisation's mandate has since expanded, opposition to e-tolls and the litigation arising from it remains a core activity.

Compliance by motorists has always been low and payments are at about 29% of what is billed. OUTA opposes the e-tolls because the system

is irrational, the Gauteng freeways are not new routes and many use them for daily commuting, there are no viable alternative routes, Government's user-pay principle is flawed, there was a lack of transparency and consultation in planning the scheme, and alternative models of funding are available such as the fuel levy.

OUTA has created an E-toll Defence Umbrella, which is aimed at providing support in the defence of motorists who are summonsed by the South African National Roads Agency (SANRAL) over unpaid e-toll bills. This is only for motorists who have contacted OUTA, provided details of their summonses and provided OUTA with a mandate to assist them in their matters.

While OUTA's initial litigation against the e-toll scheme did not manage to close it down, the Supreme Court of Appeal allowed SANRAL to continue with e-tolls while leaving the door open for a defensive challenge to be raised against SANRAL if and when it decided to prosecute motorists for defaulting on e-toll bills. This is part of the basis of the current action by OUTA.

Since December 2013, numerous motorists have refused to pay e-tolls leaving an estimated R11 billion outstanding to SANRAL by the end of February 2018. By October 2017, SANRAL said it had issued at least 8 000 summonses against motorists. While the summonses are civil claims for unpaid debt, SANRAL has also indicated that failure to pay tolls may also be prosecuted as a criminal offence.

SANRAL and its debt collectors continue to send SMSs to motorists calling for payments, including to people who don't own vehicles, which supports the allegations that SANRAL has obtained a mailing list and is simply messaging everyone on it.



By the end of February 2018, motorists facing 576 cases with claims totalling R71.3 million, were being assisted in their defence by OUTA. These were 515 cases in magistrate's courts, and 61 in the high court.

OUTA assists motorists who are opposed to SANRAL's claims in two ways. Firstly, it tests the merits of each case, since every case differs. Secondly and, perhaps more importantly for South Africa, there's the 'collateral challenge', which is the legal challenge related to the constitutionality of the e-toll scheme itself.

OUTA is assisting motorists to have this challenge heard prior to the merits of each specific case being heard. Should a challenge on the unconstitutionality of the introduction of e-tolls be won, the entire e-toll scheme falls. OUTA believes there is a strong case, but it is slow work getting it through the courts, because there are many individual cases and a tremendous amount of paperwork involved.

The issues may be separated, so that the issues of lawfulness of the scheme are argued before the merits of each case. This means using a test case, or a group of test cases to cover all the issues, but these cases have not yet been

agreed on between OUTA and SANRAL, and a court date has not been set for the first case. While the court case planning continues, the future of the scheme may still be decided by political intervention, but this would require a decision by the Cabinet. By November 2017, SANRAL's annual report for 2016/17 showed impaired debt of R3.6 billion in connection with e-tolls. At the time, the then Minister of Transport, Joe Maswanganyi, said that SANRAL was spending R2 billion from the non-toll portfolio to service the GFIP debt. By the end of February 2018, there were hints of the recognition at national level of the failure of e-tolls. Gauteng Premier, David Makhura, in his State of the Province address said: "The new dawn must also bring a solution to the protracted and unresolved problem of e-tolls. It is loud and clear for all to see that e-tolls have not worked."

OUTA

Turning AARTO into road safety

The proposed Administrative Adjudication of Road Traffic Offences Amendment Bill (the AARTO Amendment Bill), which is intended to amend the existing AARTO law, is a contentious issue for our supporters and the public.

The amended Bill was passed by the National Assembly in September 2017 and is now with the National Council of Provinces (NCOP). OUTA has raised various concerns, particularly that the amendment has more to do with making money and helping rescue a failed e-toll scheme than it is about tackling road safety.

In November 2017, OUTA provided a substantial submission to the NCOP's Select Committee on Economic and Business Development, and attended several public hearings making further comments.

OUTA has opposed the removing of motorists' rights to defend themselves when being wrongly accused of traffic infringements, challenged the viability of the proposed debt-collection system and called for the amendments to place greater emphasis on improving road safety.

This is legislation which aims to remove the licences of defaulting motorists, so it needs to be workable. OUTA wants to see a law that prioritises road safety and is also administratively workable, so we will continue to work on this issue during 2018.

OUTA will host a workshop to discuss the Amendment bill with relevant stakeholders. The Road Traffic Infringement Agency will be invited to give clarity to industry stakeholders and the outcome of the workshop will be communicated to Parliament.

SAA on life support

In March 2017, OUTA and the South African Airways (SAA) Pilots Association launched a case to declare Dudu Myeni a delinquent director and block her from being appointed as a director to the board of SAA or any other business.

This hearing is set for 7 October 2019, which highlights the delays our legal teams often face. Myeni was on the SAA board from October 2009 and chaired it from 2012 until her term ended in August 2017. During her tenure, SAA lost about R10.6 billion over five years and required billions of rand in state bailouts. OUTA's action arose from our successful 2016 interdict which blocked SAA paying R256 million to BnP Capital to source funds for the airline. We also saved SAA a further R49 million in cancellation fees on that contract. OUTA laid criminal charges against the BnP Capital director and the National Prosecuting Authority indicates that this case may be in court during 2018.

During 2017, OUTA laid complaints with the South African Institute of Chartered Accountants (SAICA) and the Independent Regulatory Board for Auditors (IRBA) against Yakhe Kwinane, who was on the SAA board since 2009 and chaired the audit and risk committee until she resigned in late 2016. In mid-2017, OUTA complained to the IRBA about Phumeza Nhantsi, a chartered accountant who was the interim CFO at SAA from 2015 and then permanently appointed in May 2017. She was suspended in early 2018. The outcomes are awaited.

MAY 2007

SANRAL announces the Gauteng Freeway Improvement Project (GFIP), developed with the Gauteng government and the Joburg, Tshwane and Ekurhuleni metros, to build or upgrade 500km of roads. The project will be financed on a "user pays" principle using electronic tolling. Later that year SANRAL estimates the toll tariff at 50c per km.

JULY 2007

Cabinet approves the GFIP as a state-implemented toll scheme.

OCTOBER 2007

Minister of Transport announces the GFIP toll road scheme.

JUNE 2008

SANRAL starts construction on most of the R23 billion first phase of GFIP.

FEBRUARY 2011

SANRAL says toll fees will be 66c per km for cars, less for motorbikes and more for trucks. Tolls at the 42 tolling points are R3.43 to R9.24 for cars and R20.58 to R55.44 for heavy vehicles. Public outcry follows.

JUNE 2011

Tolling was due to start, but was postponed indefinitely due to public protests.

MARCH 2012

OUTA is established and starts legal action in the Pretoria High Court aimed at preventing the e-tolls.

MARCH 2012

Government gives SANRAL a R5.75 billion bailout towards GFIP debt.

APRIL 2012

Pretoria High Court grants OUTA an urgent interim interdict blocking SANRAL from tolling GFIP roads, pending the review application.

MAY 2012

SANRAL says the GFIP will cost R89.722 billion over 24 years of loans.

OCTOBER 2013

After long legal battles by OUTA in various courts, the e-tolls go ahead. But the judgments leave open the door for a defensive challenge against e-tolls.

DECEMBER 2013

SANRAL switches on the e-tolls.

JUNE 2014

Gauteng Premier David Makhura launches e-toll Socio-Economic Impact Review Panel and e-toll compliance declines further.

SEPTEMBER 2015

OUTA launches an e-toll defence umbrella.

APRIL 2016

SANRAL issues the first summons against e-toll defaulters.

SEPTEMBER 2016

Supreme Court of Appeal upholds a Western Cape judgment in favour of the City of Cape Town, cancelling SANRAL's plans to use tolls to fund the upgrading of the national roads.

DECEMBER 2016

It's three years after the launch of e-tolls, so all outstanding e-toll accounts on which no legal action was taken start to prescribe.

MAY 2017

OUTA starts to file pleas opposing SANRAL's summonses to motorists over unpaid e-toll accounts. These matters are continuing.

NOVEMBER 2017

SANRAL's 2016/2017 annual report shows impairment of R3.6 billion, apparently arising from unpaid e-toll accounts.

FEBRUARY 2018

Gauteng Premier David Makhura in his State of the Province address acknowledges that e-tolls have failed.

FEBRUARY 2018

OUTA has arranged legal defence for 576 cases of motorists being sued by SANRAL over unpaid e-toll bills valued at a total of R71.3 million.

MARCH 2018

Minister of Transport Blade Nzimande says the collapse of e-tolls has had a negative impact on everyone including SANRAL.



THE E-TOLLS: PUBLIC REFUSAL TO PAY

PORTFOLIOS & PROJECTS: **ENERGY**



Ronald Chauke, OUTA Portfolio Manager for Energy

Overview

- OUTA made presentations to the Parliament Portfolio Committee on Public Enterprises's inquiry into state capture at Eskom.
- OUTA gave a submission to the National Energy Regulator (NERSA), objecting to Eskom's application for a 19.9% price increase. With other public objections, this influenced NERSA to grant an increase of 5.23%.
- OUTA ran a successful public participation campaign against Eskom's price increase.

This portfolio is managed by energy analyst Ronald Chauke.

The Energy portfolio is dominated by projects entailing written inputs into legislative and energy policy processes, and by projects aimed at holding energy sector authorities accountable, exposing poor corporate governance and corruption at Eskom, and instituting litigation, recommending corrective interventions and challenging the increasing price of electricity.

Energy policy

OUTA is monitoring Government's legislative development and review processes on the energy

sector. The national Integrated Energy Plan (IEP) and its sub-plans, the Integrated Resource Plan (the IRP) for electricity and the Gas Master Plan, are due for updating to provide policy clarity. OUTA provided written comments on all key policy documents, published in 2016 for public consultation. The revised plans are still awaited.

In April 2017, civil society organisations Earth-life Africa and the Southern African Faith Communities' Environment Institute (SAFCEI) won a judgment in the Western Cape High Court which halted government's secretive decisions on the nuclear build programme and its related procurement process. The ruling stipulated that the process start again, with proper public consultation, and that any nuclear power procurement must follow a due public participation process. OUTA provided assistance to SAFCEI. In August and September 2016, OUTA funded and produced two documentary videos, "SA's Nuclear Bomb – Why Government's Nuclear Deal Will Destroy SA" to support this court action. These videos can be located on YouTube: search under OUTA South Africa.

In December 2017, OUTA and other civil society groups successfully opposed a planned Energy Indaba by then Minister of Energy, David Mahlobo. This was seen as an attempt to regard the meeting as public consultation on the IEP and IRP. Clarity on these policies is still awaited.

Unbundling Eskom

OUTA is still awaiting the outcome of its February 2017 complaint to the Competition Commission, concerning Eskom's abuse of its dominant position in the South African electricity supply industry and calling for the unbundling of Eskom into two entities, generation and transmission.

Opposing Eskom corruption

The organised manipulation and looting of Eskom was further exposed during the year. OUTA laid criminal charges against members



of Eskom's board and management, and issued complaints with law enforcement agencies and professional bodies. (See State Capture Portfolio).

We provided analysis on Eskom's July 2017 annual integrated results, showing R3 billion in irregular expenditure, followed by Eskom's interim financial results released in January 2018, showing healthier finances and a new board.

In July 2017, OUTA briefed Parliament's Portfolio Committee on Public Enterprises for its inquiry into the state capture of Eskom. OUTA's input arose from our report 'No Room to Hide' which was submitted to Parliament. (See State Capture Portfolio for more). In October 2017, OUTA gave further input to the Committee's inquiry.

Electricity pricing: the call for 0%

OUTA campaigned throughout the year against the increasing price of electricity, which is regulated by NERSA. OUTA wrote to the National Treasury and the Ministry of Public Enterprises, calling for improved oversight of Eskom's out-of-control spending on the new build projects and transparency in the coal contracts.

In May 2017, OUTA opposed the above-national guidelines electricity price hikes for municipalities, deeming these illegal. NERSA ultimately refused 13 municipal applications, but granted

higher-than-guideline increases to 20 municipalities, including some municipalities whose applications had not gone through the required public process. Electricity pricing was dominated by Eskom's call for a 19.9% price increase for 2018/19. OUTA campaigned against Eskom's attempt to have the rules on the disclosures waived. We were partially successful: NERSA declared that Eskom must provide the information to NERSA, but NERSA released only part of this information to the public.

OUTA ran a campaign against the price application. NERSA received an unprecedented 23 000 submissions, for a process which typically drew a dozen submissions. Although we did not block the Eskom increase entirely, it was set at 5.23%.

The process of setting the national municipal price started in February 2018; OUTA will oppose this, as there has been little attempt by NERSA to ensure that municipalities pay their Eskom bills, or carry out the budgeted maintenance on their power infrastructure. A new electricity price war started in February 2018, when Eskom filed three applications to NERSA for R66.7 billion, in terms of the regulatory clearing account process. OUTA is opposing the application.

Carbon Tax

In December 2017, the Draft Carbon Tax Bill was published for public comment. OUTA prepared a lengthy submission on this, due to go to both the parliamentary Standing Committee on Finance and the National Treasury's tax policy division in March 2018.

This submission is expected to raise concern about balancing the need for reducing carbon emissions with the cost of such a tax on the economy. There are also concerns over the lack of economic modeling, the lack of emissions baseline data, the lack of evidence that such taxes will lead to behaviour changes by the polluters, the administrative burden and the effect on already high electricity prices, as well as the lack of assurance that taxes will be ring-fenced for their stated use.

OUTA

PORTFOLIOS & PROJECTS: WATER & ENVIRONMENT



Julius Kleynhans, OUTA Portfolio Manager for Water and Environment

Overview

- OUTA assisted in building a case against the Recycling and Economic Development Initiative of South Africa (REDISA) and its directors. Action was taken by the Department of Environmental Affairs and the Green Scorpions are preparing to prosecute.
- OUTA was vocal alongside other civil movements and individuals, in halting the City of Cape Town's proposed drought levy. OUTA made a detailed submission opposing the levy and issued letters of demand as a prelude to legal action if the City went ahead with the levy.
- OUTA put pressure on the Department of Water and Sanitation to get the Lesotho Highlands Water Project Phase II underway. The stalling of the project resulted in billions of rand in public funds being lost. Following OUTA's lobbying, tenders for engineering contracts were issued so that work could begin.

In the past financial year, the Water and Environment Portfolio, managed by Julius Kleynhans, assessed various policies and legislation which affect environmental and water security. Before the end of 2017/18, Kleynhans was appointed as the organisational development manager. A new Portfolio Manager for Water and Environment, Siqhamo Yamkela Ntola, was due to start in 2018/19.

South Africa's ecological systems are in a perilous state. OUTA aims to check that public funds are used to protect our natural resources and that Government invests in cost-effective, sustainable projects that benefit all South Africans. The legal custodian of South Africa's water is the Minister of Water and Sanitation, who was Nomvula Mokonyane from May 2014 until February 2018. OUTA regards her role in the water ministry as disastrous and, in June 2017, published an opinion piece commenting that "El Mokonyane" poses a greater risk to South Africa's water than the periodical global drought, El Nino.

Recycling and Economic Development Initiative

OUTA helped to build a case against the Recycling and Economic Development Initiative of South Africa (REDISA) and its directors. OUTA's findings of corruption implicated REDISA CEO, Hermann Erdmann. OUTA found that Kuzaga Taka Consulting, a company partially owned by Erdmann, was appointed without competitive bidding processes at approximately R100 million a year. The complete executive authority of the REDISA board was found to have been involved in unscrupulous activities, alongside Erdmann's dealings.

"We trust that the Hawks and the Green Scorpions will be successful in their investigation and prosecution. We sincerely hope that the Department of Environmental Affairs will claw back the money through its liquidation application. Those who abuse tax money must be held accountable."

Julius Kleynhans, Portfolio Manager for Water and Environment

Cape Town drought levy

On 5 December 2017, the City of Cape Town's council decided to introduce a drought levy to raise funds from residents for urgent infrastructure needed due to the drought. OUTA opposed this action, calling it illegal and irresponsible governance.

On 20 December 2017, OUTA issued a letter of demand to City of Cape Town mayor Patricia de Lille, challenging the proposed levy, as well as the limited public participation process and the lack of action taken against the national Department of Water and Sanitation on the matter. OUTA sent the City a detailed submission opposing the drought levy, as part of the public participation process.

There was significant public pressure against the drought levy, from civil society groups and individuals. By the end of January 2018, the City had backed down and scrapped the proposed levy.

Lesotho Highlands Water Project

In July 2017, OUTA published a report listing concerns about the delays and problems in the Lesotho Highlands Water Project's Phase II (LHWP II).

The LHWP II started in 2004 and was scheduled for completion in 2019, but has been delayed numerous times and extended to 2025. This is a joint project between the South African and Lesotho governments. The project involves building infrastructure to allow the long-term supply of water from Lesotho into the Vaal River system – Gauteng's primary source of water – with South Africa paying Lesotho each year for the water. This is water which will supply Gauteng, Rustenburg and further afield, reaching up to five million people. The project was halted several times, allegedly due to interference in tender processes by the then Minister of Water and Sanitation, Nomvula Mokonyane. No contractors were appointed but the project that was

meant to cost South Africa R15.5 billion is now being tabled at R26 billion. OUTA reported that the Minister's delays on the project in 2016 cost South Africa R2 billion.

OUTA's intervention includes applying local and international pressure on the Ministry to act in the best interests of the people. Our legal team is investigating legal action to hold the Minister to account.

Water Quality Transparency Project

Over recent years, there have been numerous indications that the management and quality of water and sewerage systems are not being maintained to the required standards.

The last Blue Drop report on water quality was for 2014 and this was released only three years later, showing that only 44 out of 1 093 drinking water systems achieved Blue Drop status. The last full Green Drop report on wastewater systems was in 2012, showing 248 wastewater systems in crisis; the 2013 Green Drop report was only a summary. The No Drop reports on water leaks have not been published since 2012. These are the responsibility of the Department of Water and Sanitation and are crucial for assessing the state – and safety – of our country's systems. It is for this reason that OUTA aims to hold governing authorities to account on water issues, predominantly at a national and ministerial level.

OUTA is seeking answers from the Department of Water and Sanitation, as it is the regulator and custodian of our water. By neglecting to monitor water quality and without publishing regular water quality and management reports, the Department is guilty of an abuse of authority. In March 2017, OUTA filed a complaint to the SA Human Rights Commission on the Department's failure to provide these reports. The Commission passed this on to the Public Protector. This is still in process.



PORTFOLIOS & PROJECTS: SPECIAL PROJECTS



Dominique Msibi, Portfolio Manager for Special Projects

Overview

- OUTA was a partner in the FutureSA discussions which resulted in a large gathering of South African leaders to discuss the future of the country. The outcome of this discussion was a collaborative effort by several civil society movements, mobilised across the country and calling for the removal of Jacob Zuma as President.
- OUTA laid criminal charges against the SABC's Hlaudi Motsoeneng for lying about his qualifications, which enabled him to secure employment at the SABC and later rise to the position of Chief Operating Officer, and against then Minister Faith Muthambi over the sharing of confidential Cabinet information with the Guptas and abusing her power by appointing Motsoeneng as COO. OUTA complained to SAICA about financial mismanagement by James Aguma, the CFO at the SABC during Motsoeneng's tenure. These cases are still under investigation.

OUTA's Special Projects Portfolio is headed by Dominique Msibi. This portfolio focuses on projects that directly affect citizens, particularly those who have been marginalised and disempowered by corruption.

Joining hands against corruption

On 18 July 2017, OUTA was part of the Conference for the Future of South Africa (FutureSA) along with other civil society organisations, to reaffirm their commitment to ending state capture and call for Jacob Zuma to resign or be voted out of office. Some 600 people representing 130 organisations attended the conference, including then ANC MP Makhosi Khoza, who had faced disciplinary action from her party and death threats over her outspokenness, and Reverend Frank Chikane of the South African Council of Churches. The coalition's patrons included OUTA's Wayne Duvenage, with Sheila Sisulu, Mavuso Msimang, Kumi Naidoo, Adrian Enthoven, Prema Naidoo, Zwelinzima Vavi, Bruce Fordyce, Shaukat Fakie, Giet Khoza, Cas Coovadia, Mosibudi Mangena, Vuyiseka Dubula, Sydney Mufamadi, Siphon Pityana, Ela Gandhi, Bonang Mohale, Terence Nombembe and Zac Yakoob.

The Constitutional Court case brought by the Black Sash against the Minister of Social Development and the South African Social Security Agency (SASSA), dominated the social grants sector. While OUTA was not an applicant in this matter, our team supported the Black Sash in its legal fight to force then Minister of Social Development, Bathabile Dlamini, to act in the best interest of those who depend on social grants.

The Azande contracts

In mid-2017, OUTA uncovered the award by SASSA of irregular tenders to Azande Consulting, under SASSA's Mikondzo project. SASSA had in July 2016 approved two contracts with Azande for outreach programmes and, by the time OUTA discovered this, had spent R221 million although they were only one year through their three-year contracts.

After OUTA alerted SASSA, SASSA undertook to run an internal investigation. However, OUTA understands that SASSA continued to use and pay the supplier. OUTA is preparing a legal case to take this matter forward.

Communication: SABC

In the past few years the SABC has failed to provide access to unbiased information to all South Africans. OUTA raised concerns regarding the dismissal of staff who opposed journalistically compromising policies, and the broadcaster's scant regard for the Public Protector's report which exposed substantial misuse of power by top management and reporting bias.

In March 2017, the appointment of the SABC's interim board saw the beginning of the restoration of the public broadcaster's credibility. In its six-month tenure, the interim board achieved the following: the cancellation of the Lorna Vision contract, through which Pritchard and Associates was illegally appointed as a debt collection agency; suspended and ultimately fired SABC COO Hlaudi Motsoeneng; started proceedings to seize Motsoeneng's pension due to his misconduct; suspended and subsequently fired CEO James Aguma; and appointed a new panel of debt collectors with legitimate contracts.

These are actions for which OUTA campaigned, so we welcomed the board's actions. While these actions suggested a turnaround, our concerns were renewed by subsequent events: the appointment by President Zuma of a new SABC board with both the chairperson and deputy reportedly closely linked to him; President Zuma's appointment of ally Ayanda Dlodlo as the Minister of Communication, along with allegations of attempts to manipulate senior appointments at the SABC; and later the appointment by President Cyril Ramaphosa of Nomvula Mokonyane as the Minister, despite her performance as Minister of Water and Sanitation.

Communication: MultiChoice

In February 2017, OUTA began to investigate a R100 million payment to the SABC that allegedly resulted in undue influence in the regulatory requirements and development of set-top boxes. As this project unfolded OUTA added investigations into anti-competitive practices. This matter is now in the engagement phase.

In November 2017, OUTA called on MultiChoice to stop broadcasting ANN7, channel 405, through its DStv bouquets. ANN7 is the TV channel set up by the Guptas and subsequently sold with a vendor loan to former ANC spokesperson, Mzwanele Manyi. In January 2018, MultiChoice announced that it would not renew the ANN7 contract when it expires in July 2018.

Higher education sector

We are uncovering and investigating what appears to be corruption within a higher education college in Gauteng. We have also initiated an investigation into serious allegations of fraud in various Sector Education and Training Authorities (SETAs).



PARLIAMENTARY ENGAGEMENT

Overview

- OUTA opened a Parliamentary Engagement Office in Cape Town during 2017.
- OUTA petitioned Parliament to change the public participation laws to improve transparency by preventing the launch of public consultation during the December-January holiday period.
- OUTA submitted a detailed comment on tax and spending policy to Parliament, arising from Budget 2018.

Improving transparency on policy and laws

On 10 July 2017, OUTA launched a petition to Parliament calling for a change to the law to increase transparency by stopping public participation processes from being launched over the December/January holiday period. This collected 14 899 signatures and was sent to Parliament.

OUTA regards public participation as crucial in policy making and legislative processes, not only for those routinely watching for such processes but also for the broader public. Running public participation processes during the holiday period limits public participation and sharing of knowledge, and limits the ability of individuals and organisations to network on these.

One example of the use of the holiday period for “consultation” was the nuclear deal determination, which was published on 21 December 2015. This programme was to procure 9 600 megawatts of electricity through nuclear energy – a programme that would likely bankrupt South Africa if it had gone ahead. This deal was halted after a legal challenge by civil society (see the section on the Energy Portfolio), but uncertainty over this helped lead to the downgrading of the country’s investment status.

Meaningful public participation is one of the most important aspects of our democracy because it is intended to be representative and participatory in its nature. It is considered so important that it is the only requirement for which exemption cannot be given, as people have the right to be informed about decisions which may affect them and to be afforded the opportunity to influence those decisions.



OUTA's parliamentary office

In mid-2017, OUTA set up a Parliamentary Engagement Office in Cape Town, with two staffers.

This office brings OUTA closer to the activities of Parliament, enabling better engagement with Members of Parliament. Further, OUTA's Parliamentary Engagement Office allows us to be an observer at pertinent portfolio committee meetings and to provide input directly to MPs and committees.

Since the introduction of this initiative, feedback on matters being discussed in Parliament on projects with OUTA's portfolio managers has been effective and informative. The use of this office to raise our concerns with MPs or submit documents to Parliament has kindled a constructive relationship between OUTA and some MPs. This has enabled OUTA to respond to requests from MPs and parliamentary committees for input and presentations from OUTA on matters of public interest.

OUTA will engage with other civil society organisations to make use of this office, as a conduit to collaborate on issues that affect the coalition of civil society organisations.

Tax policy

In May 2017, OUTA launched a Tax and Finance Portfolio, to identify key areas of work and compile submissions to the authorities. This work now also involves OUTA's parliamentary office. This portfolio calls for specialised research, requiring an understanding of issues related to tax revenue and expenditure, and the effects these have which may have been overlooked.

This new portfolio within OUTA will evaluate different types of taxes and how the State uses the funds, and raise awareness of hidden costs.

In May 2017, OUTA wrote a letter of demand to the Financial Services Board requesting that it block the state-owned Public Investment Corporation (PIC) from further funding financially struggling state-owned entities (SOEs) such as South African Airways (SAA) and Eskom. OUTA believes that the maladministration of these entities is the reason they are in need of funds and also why the private sector is reluctant to invest in them. Our letter called for the PIC's investments in these SOEs to be declared and for bailouts to be suspended until the governance issues are addressed.

In June 2017, OUTA began a study into the possibility of implementing a national debt ceiling, aimed at regulating and limiting national debt and thus improving the economic situation of the country. This project is ongoing.

In February 2018, OUTA submitted a report with our comments on the national Budget 2018 to the Standing and Select Committees on Finance. This submission opposed the increase of VAT to 15% from April 2018 and called for no further tax increases in 2019, due to concerns about waste and corruption in state spending.

OUTA will compile input on future national budgets and will be involved in scrutinising and engaging on new taxes and increases or expansion of existing taxes, to ensure that society does not suffer from being overtaxed or taxed for matters rising from weak governance.

OUTA'S LOCAL GOVERNMENT PROJECT



Michael Holenstein, Portfolio Manager for OUTA Local

Overview

- A new chapter for OUTA: the start of OUTA Local.

OUTA Local is our newest portfolio – and it may well become our biggest.

OUTA Local is focusing on local government. The programme was initiated by Portfolio Manager Michael Holenstein, who has eight years of experience in local government. Work started on OUTA Local before the end of 2017/18 and it is due to launch early in 2018, under the leadership of Dr Makhosi Khoza.

OUTA Local aims to address the maladministration, corruption and collapse of local government. This will be conducted via projects conducted in identified municipalities, raising the alarm on local issues and relying on local support and funding.

There is an urgent need for action on local government. OUTA believes that municipal executives frequently fail to comply with the legal obligations of the Constitution and municipal finance laws. Municipal managers find that the

"This is starting a brand new organisation within an organisation."

Michael Holenstein, Portfolio Manager for OUTA Local

bureaucratic process required to 'get things done' is blocked by personal interest groups.

Oversight over local government has failed at many levels: locally, at the level of the provincial departments and at the national Department of Cooperative Governance and Traditional Affairs (CoGTA). The Constitution requires provincial executives to intervene in failing municipalities: if municipal managers or mayors are aware that they are unable to pay creditors, they must alert the provincial authorities, which must escalate this to the national CoGTA. A reluctance to intervene by the provincial and national departments emphasises their failed oversight. This failure has allowed municipalities to accumulate debt, resulting in municipalities' inability to collect revenue or pay for bulk services from Eskom and water boards.

OUTA Local's approach will be to identify key municipalities for setting up OUTA Local branches. We will assess municipal Integrated Development Plans (IDPs), the budgets and capital projects, and monitor these, partly by using the routine municipal financial reports.

We expect to find problems common across the municipalities, such as billing issues, difficulties with paying for bulk services and general service delivery challenges. The priorities for each branch will be identified by local representatives and the OUTA Local branch manager.

“Local government touches the lives of every South African, it’s the sphere of government closest to communities. That is why it is so important that it works.”

Michael Holenstein, Portfolio Manager for OUTA Local



OUTA Local will be launched during 2018. The first branch will be established in the Govan Mbeki Local Municipality. Govan Mbeki was identified after the ratepayers’ association and concerned residents contacted OUTA for assistance when Eskom was threatening to interrupt the power supply after the municipality defaulted on its Eskom debt repayment agreement.

OUTA believes that a local government “watch-dog with bite” is needed to ensure accountability and transparency as too often concerns are raised only when the damage has been done, resulting in failed municipalities.



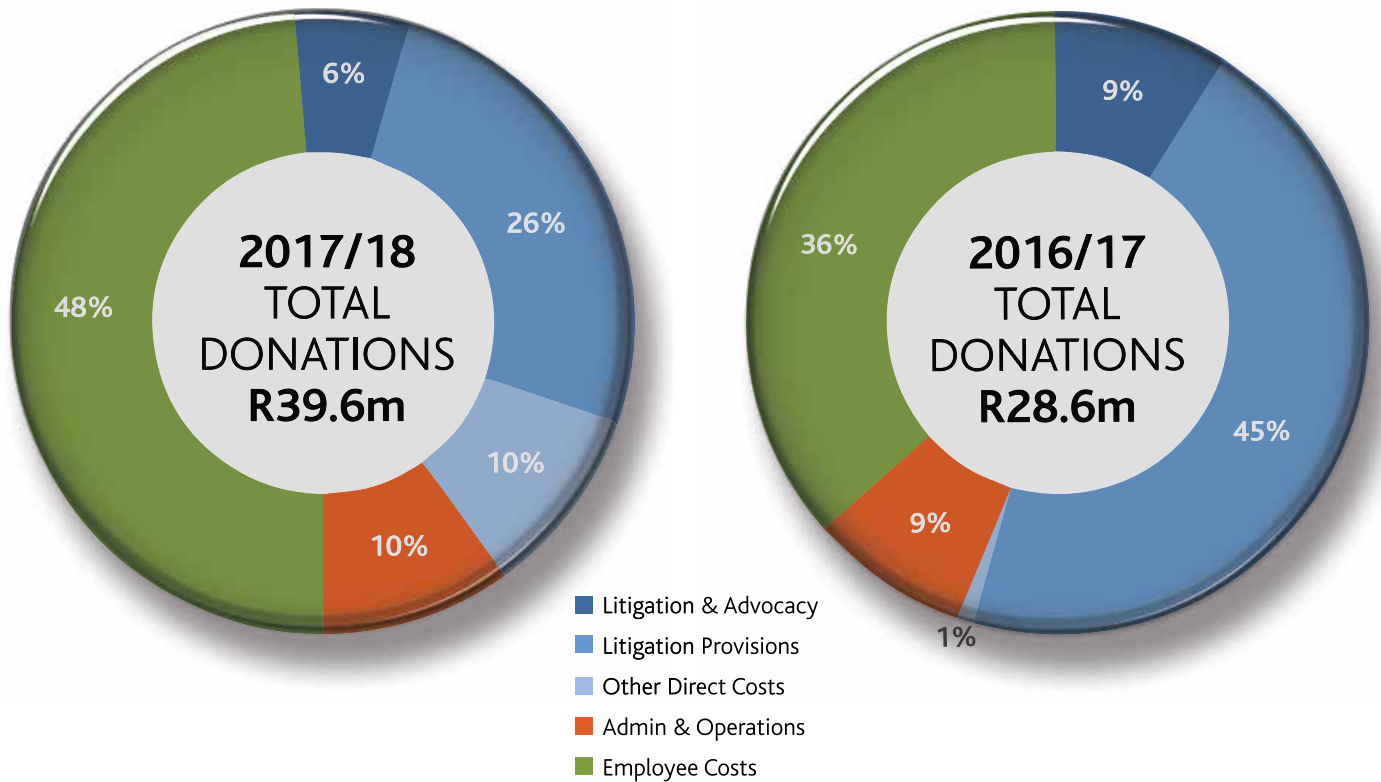
Dr Makhosi Khozi is joining OUTA Local

OUTA





OUTA'S FINANCIALS



35 _____ AVERAGE HEADCOUNT _____ 22
 58 _____ No. of NEW PROJECTS _____ 18

- **INCOME: grows by 39%**
 Depicts the organisation's continued and rapid growth.
- **REVISED OPERATING STRUCTURE IN 2017/18**
 New portfolio specialisation & project management structure introduced in Q4 of 2016/17 improves organisational productivity.
- **AVERAGE HEADCOUNT of 35 increases by 59%**
 Staff costs remain within range of 45-55% income.
- **INCREASED PROJECT ONTAKE**
 58 new Projects were opened in 2017/18, which was 222% up on prior year's 18 new projects undertaken.
- **LITIGATION PROVISIONS GROWTH**
 Covers current and future expected legal costs with funds in hand.

EXCEPTIONAL PEOPLE MAKE ALL THE DIFFERENCE IN **CIVIL ACTIVISM**

OUTA'S WORK REQUIRES FEARLESS – BUT NOT RECKLESS – TENACITY



We tackle people of high influence, often wealthy people who have deep pockets for litigation and a lot to lose as a result of our work.

Our people need to do their work well, to gather the facts to motivate charges, to build strong cases, and to communicate these issues to the public and our supporters.

This means OUTA needs to employ people who are competent and productive; this requires paying market-related salaries and keeping our staff engaged and motivated. Internal leadership and organisational energy assessments were con-

ducted and will be repeated annually, to gauge leadership impact, communication effectiveness and the organisational culture.

This year's leadership impact survey was positive. A score of 80.4% reflects high organisational energy and a positive organisational culture within OUTA. The independent facilitator of the survey remarked that "OUTA's Organisational Energy assessment was one of the highest seen, when compared to the hundreds of corporate assessments undertaken by us". (Note: the faces of some personnel in the photograph above have been blurred to protect their identity).

OUTA



OUTA

ORGANISATION UNDOING TAX ABUSE

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