

GETTING BEYOND THE E-TOLL IMPASSE

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Initially compiled in September 2014 and titled “Beyond the Impasse” by Wayne Duvenage (OUTA Chairperson) and John Clarke (Consultant Social Worker), for presentation to Premier David Makhura’s Gauteng Advisory Panel on Socio-economic Impact of e-tolls.

This position paper has now been updated and revised in August 2019 under an amended title:

“Getting Beyond the e-toll Impasse”

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1. EXECUTIVE SUMMARY

In 2007/8, SANRAL (SA National Roads Agency Limited) presented a plan to upgrade 186km of Gauteng Freeway network to Government, which included the introduction of an electronic tolling (e-toll) system to finance the bonds for the upgrade. The freeway upgrade along with the declaration of the freeway network as a tolled route, were both approved by cabinet and construction on the freeway began later in 2008.

By 2010, once most of the freeway upgrade was complete, the erection of the e-tolling gantries evoked questions by the public as to the purpose of these structures. On learning about Government's plan to toll what were previously non-tolled roads within an urban environment, the public, business, labour organisations and most political parties objected profusely to the introduction of the e-toll scheme.

Public, business and labour union pressure led to several delays of the e-toll scheme's launch throughout 2011, giving rise to announcements of revised tariffs which reduced from an initial plan of 66c/km to 40c/km, in an attempt to placate public dissent. In February 2012, the Minister of Finance pronounced the scheme would go ahead on 31 April and the tariff was once again reduced, this time to 30c/km.

In February 2012, a business-driven civil action group called OUTA (the Opposition to Urban Tolling Alliance) was formed to challenge the e-toll scheme in court and successfully interdict its launch, planned for 30 April 2012. The next two years saw a costly court challenge unfold, culminating in SANRAL being allowed to continue with their plans to toll the freeway network. The Supreme Court of Appeal also ruled that the public may bring a defensive challenge against the scheme's merits and lawfulness, in the event that SANRAL instituted summonses for non-payment.

The court challenge and other developments gave rise to a number of questions pertaining to the cost of the 186km freeway upgrade (increasing substantively from earlier estimates of R2.2 billion to a final bill of R17.9 billion), as well as the cost of e-toll operations (which jumped from R4.7 billion tendered price from ETC, to the contracted amount of R8.2 billion). This information further aggravated public anger and dissent.

By December 2013, the e-toll scheme was eventually launched following a substantive marketing and public relations drive by SANRAL to coerce the public to participate. Within months, it became evident that the public were not supporting the scheme and a strong civil disobedience campaign evolved, driven by widespread disapproval and rejection of the scheme, whereby most road users refused to purchase the required e-tags or to pay for the use of the freeway network.

OUTA, along with the unions and political parties kept the public and media informed of many complaints that arose from the administrative challenges, along with the exposure of SANRAL's many misleading statements, claims and false advertisements.

By June 2014, six months after the e-tolling operation began, public compliance stood at 40% and was generating around R120 million per month, far short of the required R260 million

per month and expected compliance levels of 93%, which SANRAL had argued in prior court challenges as being achievable.

In mid-2014, then Minister of Transport (Ms Dipuo Peters) responded to questions in Parliament that Government had no intention of criminalising e-toll defaulters, contrary to the threatening messages being received by thousands of motorists from SANRAL on a daily basis. This response, combined with an announcement by the Gauteng Premier, Mr David Makhura, of a social-economic impact assessment of the e-toll scheme, gave rise to public belief that the scheme may be called off or revised.

OUTA delivered its position paper to the Makhura panel in 2014. This document you are reading is an updated version thereof, following 5-years of additional information, research and empirical evidence of the scheme's failure.

What followed was a gradual decline of compliance over the next five years. In November 2015, SANRAL attempted to revive the scheme by offering a 60% discount and a payment plan for outstanding debt, to defaulters who became compliant going forward. This offer failed to change the course of declining compliance and only managed to raise R139 million (about 2%) of the outstanding debt.

Between 2015 and 2017, the City of Cape Town challenged SANRAL's plans to introduce a similar e-toll scheme to upgrade the city's N1 and N2/Winelands freeway network. SANRAL lost their attempts to introduce e-tolls in the Western Cape, with all three courts, (High Court, SCA and Constitutional Court) producing scathing judgments against SANRAL and the Minister of Transport.

In 2016, with outstanding e-toll debt reaching R6 billion, SANRAL began to issue summonses to Gauteng e-toll defaulters. The public in turn defended these summonses, largely through OUTA's e-toll defence umbrella enabled through a crowd-funded program introduced to bring a collateral challenge to the scheme's lawfulness and merits, as was enabled by the Supreme Court judgment in 2014.

By mid-2019, it had taken SANRAL three years to deliver approximately three thousand summonses to defaulting motorists, whilst the agreed test case against OUTA's supporters had not yet reached court. In the meantime, the scheme revenue had declined from its height of 40% compliance and R120m per month in June 2014 to around 20% compliance and R55m per month by mid-2019.

Over the past seven years, SANRAL has received several bailouts from Treasury and the finance institutions have largely abandoned SANRAL's bond auctions.

In March 2019, the Credit Bureau Association announced that e-toll debt would not feature on blacklists or affect credit ratings. Shortly thereafter, SANRAL temporarily halted its litigious debt collection campaign in response to pressure from Government, seemingly due to the ongoing public outrage during an election year.

By mid-2019, the President had asked the recently appointed Minister of Transport (Mr Fikile Mbalula) to convene an inter-ministerial discussion to find a solution to the long-standing e-toll impasse.

2. INTRODUCTION & SETTING THE SCENE

We have titled this paper “Getting Beyond the e-toll Impasse”, and in so doing we express a genuine desire to work with stakeholders, more specifically SANRAL, Treasury and the Transport authorities to achieve a solution that has unfortunately eluded us since OUTA came into existence in February 2012 (known then as the Opposition to Urban Tolling Alliance, and since converted its name to the Organisation Undoing Tax Abuse in 2016).

At the outset, we wish to state that South Africa needs SANRAL. OUTA has no desire to see the considerable institutional memory and competence that SANRAL has accumulated over the past two and a half decades lost. We do not see SANRAL as our enemy. In the same way that the Mayor of Bogota said he wanted his citizens to love the city of Bogota for what it could be, rather than hated for what it had become, we have the same attitude to SANRAL. We have always wanted SANRAL to be an inclusive, transparent roads agency that serves the nation, facilitates economic development and promotes social justice and equity, as the preamble to the Constitution expresses it. This was unfortunately not how its leadership conducted itself during the Gauteng e-toll saga.

This document is an updated and revised edition of OUTA’s “Beyond the Impasse” position paper, which we published in September 2014 and presented to the Gauteng Advisory Panel on Socio-economic Impact of e-tolls, initiated by Gauteng Premier David Makhura. In the positive climate of engagement that Premier Makhura had initiated at the time, we trusted and hoped that OUTA’s input would shed light on the many issues which culminated in the myriad of problems surrounding the e-toll scheme which had been in operation for several months by then. Obviously, so much more has transpired and what was once speculation, we can now reflect on the scheme’s actual challenges and possible solutions, with empirical evidence from over five years of e-toll operations behind us and a multitude of international examples and opinion to draw on.

We note that while our engagements with SANRAL and the State has often been adversarial in nature over the past few years on the e-toll saga, we trust that this is noted in the context of trying to be more “developmental” rather than “judgemental” and that Government will appreciate the fact that civil actions and decisions are taken from a position of seeking change through all avenues available, especially when the options of talking, meeting and numerous presentations have not been taken seriously.

Our intent has always been to highlight the gap between that which SANRAL and the Department of Transport had espoused and our reading of its actual performance. Additionally, we have consulted and researched to test our assumptions. Our founding members (the South African Vehicle Renting and Leasing Association – SAVRALA and others) have also engaged with not only SANRAL’s working committee (set up to engage with industry concerns in 2010 & 2011), as well as the Parliamentary Portfolio Committee on Transport in 2012/13, and in presentations to Parliament, in order to highlight and deal constructively with the consequences of the scheme.

Insofar as we have provided substantive evidence of maladministration, dishonesty and governance failures on the e-toll matter, despite a costly legal challenge to have the decision set aside in the courts in 2012/13, this has now spilt over into a new litigation arena as a defensive challenge involving in excess of two thousand citizens and companies who have mandated OUTA to handle their defence from 2016 to mid-2019.

Civil society remains resolute while at the same time, Government's crisis of legitimacy on the e-toll scheme has worsened and spilt over to inter-governmental spats on social media, providing society with more confusion than clarity on the way forward for the failed scheme - which now limps along with around 75% to 80% non-compliance.

Our ongoing research, observations and understanding about the decisions and mechanics surrounding the Gauteng e-toll scheme, has led us to a heightened understanding that whatever the legal and political dimensions surrounding the issues, it is fundamentally an economic issue and it must be dealt with as such.

A SOLUTION IN SEARCH OF A PROBLEM?

This report argues that the decision to embark on the Gauteng Open Road Tolling (GORT) system to finance the Gauteng Freeway Improvement Project (GFIP) was a "solution in search of a problem". It was a funding mechanism that:

- was not researched thoroughly enough;
- took lightly the risks and warnings by not only the scheme's detractors but also from SANRAL's own advisors / research input;
- was not tailored to the social and regulatory environments;
- failed to recognise the administrative challenges with the systems it relied on;
- underestimated the political climate;
- and overlooked the economic context that was significant for its viability.

That there was a need for a bold initiative to address the traffic congestion problems of Gauteng, after years of growth and a lack of pace in addressing public transport infrastructure needs, there can be no doubt. That bold decisions were taken to leverage whatever modern communications technology could offer is deserving of applause.

However, to introduce an Intelligent Transport System (ITS) at the scale intended and with the considerable complexity that the GORT scheme embodied, required something beyond intelligence. It required *wisdom* borne out of prudent research, the careful testing of assumptions and above all an open, transparent engagement and accountability to all stakeholders, most especially the users who would be expected to pay for it.

In outline, our assessment is that:

- Of the “**Eight Critical Success Factors**” (see Section 5), which appear relevant to virtually all ITS innovations globally, the GORT is in trouble on virtually all counts.
- The situation of the e-toll scheme’s failure has become a serious problem requiring urgent resolution. Doing so will require understanding and addressing the issues that caused the problem in the first place, a matter that appears to have been ignored or a reluctance to deal with it by six prior Ministers of Transport over the past decade, from Minister Jeff Radebe in 2007/8 until Minister Blade Nzimande who held the post for just over a year in 2018/19. We trust the recently appointed Minister Fikile Mbalula will be able to manage this matter with the sincerity, urgency and in a more engaging and constructive manner than efforts to date.
- To neglect to find an alternative funding mechanism to e-tolls will continue to see interest costs mount and further losses to the State, along with other unintended consequences. Worst of all is the further erosion of the State’s legitimacy and problems that it poses for peace, social stability and economic prosperity.
- Statements of broad-based policy (such as “User Pays”) cannot be the panacea to addressing the problems of a failed mechanism. There appears to be a lack of understanding and acceptance of why the “user-pays” principle has failed on the Gauteng e-toll matter, and that slogans and talk have not provided the solution to the impasse to date.
- The Gauteng E-toll scheme must not be conflated with all other toll programs around the country. The issue at hand here is the Gauteng e-toll scheme and it’s financing of the bonds secured for Phase 1 of the GFIP.

With over 5 years of e-toll operations and administration having transpired, there is substantive evidence and data to indicate why and how the Gauteng e-toll scheme has failed, and a dire need to compare the e-tolls scheme to other options that were (and remain) available to Government to fund the GFIP project, both at the time of the decision in 2007, as well as today’s situation. These will be reflected on in the content of this paper.

3. DEFINITIONS, EXPLANATIONS AND CLARIFICATIONS

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED (SANRAL).

SANRAL is a 100% State Owned Entity (SOE) established in 1998 as a corporatized company accountable to a Board of Directors (appointed by the Minister of Transport), and the Companies Act which defines the fiduciary responsibility of board members.

SANRAL’s mandate is to ensure the South African National Road infrastructure is developed and maintained. It receives revenue from three sources being:- (1) National Treasury allocations, (2) Tolling, the latter being to implement the user-pay principle to finance specific road infrastructure projects and (3) Raising revenue on the Bond Market.

Table 1 below gives a breakdown of SANRAL's road network and how this has changed over the past eight years, whereby the 2-lane non-tolls routes have increased, largely as a result of Provincial roads being handed over to SANRAL to manage, in the wake of deterioration of skills to maintain important routes at Provincial level.

TABLE 1: Summary of SANRAL's Road Network: 2010 to 2018

SUMMARY OF SANRAL'S ROAD NETWORK	2010					SUMMARY OF SANRAL'S ROAD NETWORK	2018				
	Non Toll	E-Toll	State Toll	BOT (Concessionaire Toll Routes)	Total		Non Toll	E-Toll	State Toll	BOT (Concessionaire Toll Routes)	Total
Dual Carriageway	610	186	316	443	1,555	Dual Carriageway	610	186	334	443	1,573
4-Lane Undivided	11		299	240	550	4-Lane Undivided	11		299	240	550
2-Lane Single	12,429		1,013	605	14,047	2-Lane Single	18,456		1,013	605	20,074
Total	13,050	186	1,628	1,288	16,152	Total	19,077	186	1,646	1,288	22,197
% of SANRAL Network	80.8%	1.2%	10.1%	8.0%	100.0%	% of SANRAL Network	85.9%	0.8%	7.4%	5.8%	100.0%

TYPES OF TOLLS IN SOUTH AFRICA

Prior to e-tolls, tolling operations in South Africa operated where the toll collection process is managed through "boom-down" toll plazas. The collection rates on these systems are 100% in that the boom doesn't lift until the toll is paid. They generally are placed to finance new road infrastructure, bridges, tunnels etc., where the traffic volumes are sufficient, but not too high to cause delays with a stop-go (boom) toll plazas.

Tolled roads generally fit into two categories in South Africa:-

- a) **SANRAL Owned Toll Routes:** The first being SANRAL managed and operated scheme which are located along 1628 kilometres of South Africa's national roads (e.g. Tsitsikama N2, Marian Hill N3, Huguenot Tunnel etc.). In these instances, SANRAL also subcontracts the operation and management of toll collections to service providers on a tender basis.
- b) **Public Private Partnerships:** The second type of tolled routes operate where traffic volumes and social economic circumstances justify the appointment of concessions to commercial private sector consortia in Public Private Partnerships in *Build Operate and Transfer* (BOT) agreements. In SA, this toll financing (same methodology of collection as above), applies to 1288km of SA roads. These are structured to develop new road construction initiatives and to upgrade and maintain these generally high volume "economic corridor" routes. At the end of the concession period (in the case of these contracts - 30 years), the roads are handed back to the State to continue to manage the operation as State Owned Tolled routes. The three concessioned routes and companies to date are N3TC along the N3 route, TRAC along the N4 West/ East corridor and Bakwena along the N1 north of Tshwane.

OUTA does not question the important role that SANRAL must play to harness the efficiencies of the private sector to serve the State in its obligation to provide and maintain a good national road network, however, it has recently (and will continue to) questioned SANRAL's transparency with regard to the contracts and revenues /profits earned by the three toll road concessions of N3TC, TRAC and Bakwena. For the purposes of this paper, OUTA's critique remains focussed on the e-tolling system and its high costs, unworkability, gross inefficiencies and leadership issues of transparency and accountability to the people of South Africa and why the scheme should be scrapped.

E-TOLLS & INTELLIGENT TRANSPORT SYSTEMS (ITS).

The Wikipedia explanation of Intelligent Transport Systems (ITS) is the advanced application which aims to provide innovative services relating to different modes of transport and traffic management, enabling users to be better informed and to make safer, more coordinated and smarter use of transport networks.

Electronic Tolling (otherwise known or referred to as e-tolling or e-tolls) is but part of an ITS methodology and allows for "free-traffic flow" or "open-road" tolling of a multi-lane road network, allowing tolls to be charged without drivers having to physically stop and pay at the toll point. There are no physical toll booths or booms and generally the system relies on overhead gantries fitted with toll collection equipment to recognise the electronic transponder (e-tag) in a vehicle and automatic number plate recognition (APNR) cameras to photograph vehicle license plates. A combination of registered e-tags and vehicle licence plates enables the toll company to either deduct the toll amount from the user's registered e-toll account, or post the account to the registered vehicle owner who has a specified amount of time to pay (in our case 7-days).

The e-toll efficiency that SANRAL refers to lies in the ability for people, goods and vehicles to travel without tollgate disruption. The challenge of the schemes success however, lies in retrieving the payment from user's in a "drive-now-pay-later" e-toll system that relies on:-

- An extremely efficient electronic vehicle ownership registry, which is not the case with South Africa's National Traffic Information System (eNaTIS).
- A super-efficient postal services to ensure up-to-date billing is received and payable within 7 days. Unfortunately the South African Post Office (SAPO) falls far short of these requirements.
- An excellent and efficient regulatory and enforcement environment, which has not been the case for e-tolls. It rely heavily on the Administrative Adjudication of Road Traffic Offences (AARTO), which was not operating in all metros applicable to e-toll routes and secondly, has yet to be tested as a fully functioning system on a national basis.
- Most importantly, a highly supportive public to make the operation of toll collection easy and efficient. In South Africa's situation, this is e-tolls nemesis.

To justify the investment in the costly technology, the vendors of the technology have to guarantee – rather than just promise – an efficient operation which can ensure that all users pay and that those who don't, are efficiently sanctioned.

USER PAYS PRINCIPLE

OUTA does not have any fundamental problem with the rationale behind the “User Pays” Principle. Neither does OUTA oppose the logic of an ITS/e-toll system to decisively implement the principle, so long as it does indeed achieve its aim as being effective at collecting the revenues due, is transparent in its lowest cost option to society, adheres to environmental and socio-economic challenges, is introduced lawfully and promotes the integration of urban transport systems and a more productive urban economy overall.

The Wikipedia definition of the “User Pays” principle: *User pays, or beneficiary pays, is a pricing approach based on the idea that the most efficient allocation of resources occurs when consumers pay the full cost of the goods that they consume. [However] in public finance it stands in opposition to another principle of “ability-to-pay” which states that those who have the means should share more of the burden of public services. The ability-to-pay principle is one of the reasons for the general acceptance of the progressive income system.*

In the context of GFIP, when applying the “user-pay” principle, the basic idea is that those who do not use a service should not be obligated to pay for it, which is SANRAL and Government officials’ argument who support the e-toll scheme espouse, in that “Why should taxes or levies that apply to other Provinces, be financing the GFIP in Gauteng?”

Reading the above may offer strong reasons to supports the use of e-tolls to finance the GFIP finance costs, as on the surface of it, these are good questions views or positions on which to hang the argument for e-tolls. However, these are oversimplified arguments to keep the e-toll scheme in place as the real question that the authorities continue to ignore or don't want to confront are: “how many of the users are paying?”; and if not enough, then “what are the authorities going to do about it?” and “were other avenues and/or user-pays mechanisms considered that could have achieved the financing of GFIP bonds more effectively?”

Then there is the question of **consistency** in the application of the user-pays principle”. For instance: “Do all the user’s pay for the Gautrain, or are the ticket fees subsidised by funding from Government grants?”; “Do all the users/ passengers of SAA cover all its costs, or is SAA funded by tax-payers funds?”; “Are all urban road infrastructure upgrades (eThekweni, Cape Town etc.) funded through tolling mechanisms?”; and “In fact, are all roads funded in this ‘user –pays’ manner and if not, where is the line drawn?”

It stands to reason that if Government is managing the affairs of the nation in the best interests of its people, then the method/ mechanism of funding selected should have the least cost and burden on society, whilst achieving the aims of the financing required.

Further on in this paper, we show why the Gauteng road user is being “double taxed” on e-

tolls, in that this region produces between 34% and 38% of Treasury’s taxes, including the fuel levy (now at R75bn per annum with Gauteng contributing over R26bn of that).

4. HISTORY OF THE E-TOLL SAGA

To understand how we can get out of the Gauteng e-toll impasse, we need to understand how we got into it. What follows is OUTA’s understanding of the relevant history related to the scheme’s introduction.

Following years of positive economic growth and migration from other parts of the country and Africa, the Gauteng freeway network required upgrading and expansion to address the growing problem of congestion. In 2004¹, SANRAL indicated in their Declaration of Intent for the 2005-2008 period, plans to address the need for Gauteng’s freeway network upgrade / expansion. It was referred to as the “Gauteng Network Scheme” and equated to 340km in that document. Part of that scheme would become known as the Gauteng Freeway Improvement Plan – Phase 1 (GFIP).

The GFIP went through initial stages of planning and in July 2007, Cabinet was presented with a memorandum from the Department of Transport titled “Gauteng Freeway Improvement Scheme Proposal” and was approved on the 8th October 2007, paving the way for the required announcements and public engagement processes to launch the 186km GFIP Phase-1 that linked Johannesburg, Pretoria and Ekurhuleni, along with the intended Electronic Tolling (e-toll) financing scheme.

The GFIP and its related e-toll scheme was Gazetted for public comment on 12 October 2007 and closed for comments on 14 November 2007, providing the bare minimum period of 30 days for public comment. During this period, aside from the Gazette notice, SANRAL was required to notify the public of the Gazette notice and publicise the GFIP e-toll plan in newspaper publications that would be considered as sufficient to reach the larger population of Gauteng. They chose to do the bare minimum by publishing one notice in 6 newspapers (see Table 2 below) and positioned some of these adverts in the business sections of the newspaper, which OUTA maintains was to deliberately keep the notification as low key as possible.

TABLE 2: List of Newspapers of GFIP/E-toll Public Notifications.

NEWSPAPER	Date
Star	15-Oct-07
Sunday Times	14-Oct-07
Sowetan	12-Oct-07
Pretoria News	12-Oct-07
Mail and Guardian	13-Oct-07
Beeld	15-Oct-07
Government Gazette (No: 30372)	12-Oct-07

¹ SANRAL Declaration of Intent 2005-2008 Pg. 27 (<http://www.nra.co.za/content/Declaration.pdf>)

SANRAL had every opportunity to give the process more than 30 days for comment and to place a few billboards, radio adverts and hold public discussion on the proposed plan, thereby reaching more people and enabling more clarity and engagement on the scheme. But alas, when it mattered most, they chose to do the bare minimum and conduct a meaningless public participation process in light of the magnitude of this decision and plan for the Gauteng region.

In April 2007, a draft report compiled by Dr Neville Bews and Associates, titled Gauteng Freeway Improvement Project Social Impact Assessment², lists in its conclusion on page 50: *“The success of the second scenario, in which the system is upgraded and toll fees are charged, is largely dependent on a range of factors such as the availability of viable alternate routes and there being a reliable, safe and practical public transport system in place.”* One will see in this paper, that the alternative routes and safe, reliable public transport options were not catered for and have been a significant issue relating to public rejection of the e-toll scheme.

On 10 January 2008 a document (Ref #365137) from SANRAL CEO (Mr Nazir Alli), addressed to the Minister of Transport Jeff Radebe, included proposals to declare the sections pertaining to all routes within Phase 1 of GFIP as tolled roads. In this document, the upgrade of the existing freeway is reflected to cost R11.8bn (at 2007 prices) and the toll tariff is reflected at 30c/km. Initially, tariffs were 65c/km and public pressure to scrap the system gave rise to reduction of the tariffs on two separate occasions to 40c (June 2011) and then 30c (Feb 2012).

On 28 March 2008, the specific sections of the Gauteng freeway network were officially gazetted and declared as tolled roads, paving the way for the introduction of tolling mechanisms on these routes.

Throughout 2008, SANRAL advertised and announced its plans to expand the freeway network, much to the delight of the motorists who were suffering from congestion fatigue. However, communication relating to the e-tolling element thereof was kept extremely low key.

The initial ambition was to complete the work in time for the 2010 FIFA World Cup, but this proved a stretch too far, given the demand on the construction industry to construct soccer stadia, hotels and to open the first line for the high-speed *Gautrain* between Sandton and OR Tambo International Airport. Nevertheless, by dividing the overall GFIP work plan into a number of “Work Packages”, tenders were awarded to different contractors and consortia and construction of GFIP Phase 1 got underway in the latter half of 2008. Construction progressed through to 2011, with a three-month break taken in mid-2010 to open up the largely completed widened freeways to accommodate the traffic demands during the FIFA World Cup from June to August 2010.

After the 2010 Soccer World Cup visitors departed, SANRAL began to erect the e-toll gantries and it was at this stage that SANRAL were asked by the media to explain the purpose of these gantries and the public and businesses became meaningfully aware of the e-toll plans that SANRAL had for the Gauteng road users.

² http://www.socialassessment.co.za/gauteng_freeway_improvement_project.pdf

The High Costs of GFIP Road Construction and Collusion

It is important to note that in SANRAL's Declaration of Intent 2005-2008, which was a mere four years prior to the start of construction of GFIP, the anticipated cost of upgrading 340km of Gauteng's freeway network (i.e. more than the 186km Phase-1 section) was reflected as R4,6bn at 2004 pricing. When SANRAL presented this figure, we must assume that of all the organisations that best knew the cost of road construction, this was (and still is) SANRAL's domain. As it turned out, the 186km Phase-1 section ended up costing SANRAL (effectively society) a massive R17.9bn. When calculated as a cost per kilometre, the final cost of the GFIP came in at seven times the original estimate reflected in SANRAL's Declaration of Intent 2005-2008, before adjusting for inflation.

Over a seven-year period from 2004 to 2011, various references to the capital cost of the GFIP were reflected on in the media and various reports, ranging from R2.2bn (for 230km) to R17.9bn (for 196km). The issue of what the cost of the GFIP ought to have been is a serious matter of concern to civil society. It stands to reason that if the GFIP project was unnecessarily overpriced (due to corruption and/or maladministration), then the motivation for the e-toll scheme and the amount required to service the bonds, the e-toll administration / operation costs and the e-toll tariffs become questionable (and rightfully so) and rejected as an odious and unnecessary debt by society.

Table 3 below depicts the ever-changing value of the GFIP Phase-1 (187km) and / or variable lengths of the total GFIP Phases as referenced by SANRAL or the Dep of Transport.

TABLE 3: The Ever-changing Price of Gauteng Freeway Improvement Project (GFIP)

DATE	PRICE OF GFIP CONSTRUCTION (excl Toll System)	AT WHICH YEAR PRICING	KM'S OF PROJECT REFERENCED	AVE PRICE / KM	SOURCE OF INFO QUOTED	REF DOCUMENT
2004	R4,6bn	2004	340	R13,5m	Sanral	Sanral's Declaration of Intent 2005-2008. Pg 27
2007	R6,3bn		359km	R17,5m	Star Newspaper	Pg 46 of Book published by Springer: The Changing Space Economy of City-Regions: The Gauteng City-Region, South Africa. Editor Koech Cheruiyot.
2007	R2,2bn	2004	230km	R9,6m	Sanral	Pg 109, Table 8.8. Treasury Document: Trends in Intergovernmental Finances: 2000/01-2006/07. Chapter 8 - Roads and Transport. http://www.treasury.gov.za/publications/igfr/2004/09.%20Chapter%208%20-%20Roads%20and%20Transport.pdf
10-Jan-08	R11,8bn	2007	187km	R63m	Sanral	Page 18 of document from Sanral to Minister of Transport requesting declaration of GFIP routes as tolled roads. Doc Ref: N12/4/1-GFIS/#365137. This amount is only for the GFIP road upgrade and excluded Toll system (R1,6bn) and Operations Customer Service Centres (R0.195bn). Note: This value was provided in the same year that construction started, yet the final road cost came in at 52% higher.
28-Oct-08	R11,9bn	2008	180km	R63m	Sanral	Page 16 of Written submission to Joint Budget Committee in preparation for briefing on 28 October 2008. http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/081028transport.pdf
01-Jul-09	R9,02bn	2009	187km	R48,3m	Sanral	https://www.nra.co.za/live/content.php?Item_ID=260 : The GFIP will allow unimpeded growth of the Gauteng region, and will contribute R29 billion to the GDP and R13 billion to the regional Geographic Gross Productivity by the end of 2009. Nearly 30 000 direct jobs will be created during construction, and R3.7 billion (41% of the total contract expenditure), will be given to SMME and black enterprise.
02-Feb-17	R17,9bn	2017	187	R101m	Sanral	https://www.pressreader.com/ : Document titled E-Tolling Resolution or Revolution. 2 Feb 2017. GFIP Completed in 2011. Reference interview with Sanral, GFIP Freeways copst R17,9bn plust R2,7bn for e-Toll infrastructure.

After years of SANRAL claiming that GFIP construction costs were in line with norms, in February 2013, the **Competition Commission** exposed the collusive practices of the construction cartel's manipulation of a number of construction projects from 2006 to 2009 (including the GFIP), which impacted negatively on the price of GFIP for the State (and ultimately the public). The Competition Tribunal confirmed on 22 and 23 July 2013 various consent orders relating to tender collusion cartels in the construction industry, enabling SANRAL to pursue possible claims against the persons or organisations involved in such cartels and who had admitted to tender collusion for work commissioned by SANRAL.

The outcome and sanctions applied to the construction cartel who was found guilty of collusion and price manipulation following the Competition Commission findings, gave rise to an outcome that we have described as a "slap on the wrist" to those parties implicated, entailing a R1.46bn fine by the Competition Commission³. In addition, after SANRAL had identified that it was to pursue a claim of R760m from the collusive companies, SANRAL dropped this claim and agreed to sanction a "Voluntary Rebuild Program" (VRP) wherein six of the companies agreed to contribute R1.5bn over 12 years into a trust governed by a board appointed by the State, the construction companies and the South African Forum of Civil Engineering Contractors. This trust fund would be used to finance engineering bursaries and enterprise development projects for emerging contractors.

We believe the R1.5bn agreement by the construction cartel was not necessary as the country's BBBEE process ought to have taken care of the requirement for people's training and enterprise development within these companies. SANRAL had every opportunity to institute legal action and claw back that which ought to be paid back to the State - and thereby reduce the costs of finance of GFIP to the public. In the end, nothing was refunded to SANRAL and GFIP remained overpriced to the motoring public.

In the interest of public accountability to taxpayers and users of the roads, OUTA believes that SANRAL was too close to the problem and that an independent enquiry was (and still is) needed to investigate the extent of the over-charging of the GFIP, with a view to set in motion a process to recover the monies. It is also important to note here that had the GFIP construction costs been contained to a sum of R9bn to R10bn - as was estimated by OUTA in a separate Position Paper⁴ dated 6 February 2017, the decision to implement a complex, expensive and onerous e-toll collection system may never have been approved by Government authorities and/ or the SANRAL Board.

The excessive construction costs of the GFIP were also highlighted by economist Mike Schussler in his report⁵ of the GFIP commissioned for the Road Freight Industry in April 2011. In

³ Creamer Media: 24 June 2013, Construction Companies fined R1.46bn for collusion: Wilson Bailey Holmes Ovcon (WBHO), which was fined R311.29-million for 11 projects, Murray & Roberts, which was fined R309.05-million for 17 projects, Stefanutti Stocks, which was fined R306.89-million for 21 projects, and Aveng, which was fined R306.57-million for 17 projects

⁴ OUTA Report on GFIP Construction Costs: <https://www.ouata.co.za/projects/transport/freeway-construction-costs>

⁵ <https://www.politicsweb.co.za/documents/gauteng-tolls-mike-schusslers-analysis>

it he says “GFIP costs 228% more than the World Bank funded projects” and goes on to say “Indeed, if the costs of the GFIP are inflated excessively, due to inefficiencies or other factors during the commissioning and construction processes, it will be inappropriate for SANRAL to simply transfer the excess costs to the commuter and commercial road freight industry.”

Changing Launch Dates and Tariff Revisions on the run.

After learning about the introduction of the e-toll scheme in August 2010 on the radio the SA Vehicle Renting and Leasing Association (SAVRALA) met to assess the impact of the scheme on their members and decided to set up formal meetings to engage with SANRAL from late 2010. These engagements with SANRAL’s “Technical Committee” continued throughout most of 2011, in search of answers and solutions to the pressing challenges and concerns raised by the car rental industry.

Despite the car rental (SAVRALA) discussion with SANRAL’s technical committee, SANRAL announced e-toll tariffs on 4th February 2011, and that the e-tolling scheme would commence within a few months in the second quarter of 2011. This however was postponed following a public outcry at the concept of e-tolls and the tariffs proposed.

This gave rise to the establishment of a new “GFIP Steering Committee”⁶ on 8 March 2011 (chaired by Director-General George Mahlalela) to engage with various stakeholders and assess the objections. No business representatives were invited to sit on the panel and following a rushed after-the-fact engagement process, the GFIP Steering Committee reported back in June 2011 by announcing its proposal to cabinet that e-tolling should continue, however, that the tariff be reduced from 50c/km to 40c/km for light passenger vehicles. Minibus Taxis’ tariffs were set at 11c / km. In their view, this tariff reduction should have placated the public’s anger and sentiment. A further two launch dates were postponed during 2011.

On 22 February 2012, the Minister of Finance (Mr Pravin Gordhan) announced that e-tolling would continue, however an allocation of R5.7bn would be transferred to SANRAL for GFIP project and this would enable a further reduction in the tariff from 40c to 30c/ km (light vehicle). In addition, Public Transport vehicles along with privately owned Minibus Taxis would also receive 100% exemption. Some maintain the move by the authorities to exempt Minibus Taxis was to avert a clear confrontation by this industry, which had expressed their dissatisfaction toward the authorities on other matters by conducting drive-slows and disruptions to freeway traffic.

In addition to the reduced tariff and extra Treasury funds allocated, Minister Gordhan announced that SANRAL would commence with e-tolling on 30 April 2012.

Stiff and militant announcement of opposition to e-tolls emanated from COSATU who saw no benefit to their members and low-income families. In parallel with the political mobilisation by COSATU, an alliance of business associations (SAVRALA, RMI, SANCU, SATSA, QASA) formed a new organisation known as Opposition to Urban Tolling Alliance – OUTA to mount a legal

⁶ GFIP Steering Committee Report – 30 June 2011 (no electronic link to this report available).

challenge to seek a judicial review of the lawfulness of the e-toll decision and to interdict the scheme's launch planned for 30 April 2012. While court proceedings to obtain an interdict to suspend the commencement of e-tolling were underway, COSATU and the ANC (represented by Minister of Transport Mr Sibusiso Ndebele) agreed to suspend the launch by two months to mid-2012.

Court Challenges and another failed talk shop.

OUTA's legal challenge initially was to seek a temporary interdict on the launch of e-tolling, which was achieved in a ruling by Judge Willem Prinsloo in the Pretoria High Court on 29 April 2012, to be followed by a judicial review of the decision to implement the system on the basis that far too many transgressions of citizens' rights and seemingly inappropriate decisions had occurred.

A summary of OUTA's concerns and rejection of the e-toll system is listed below and in short, the scheme was not being conducted in the best interests of society for the following reasons:-

- Gauteng's freeways are not new routes, this was an upgrade to an existing freeway system that was not subjected to tolling.
- The decision to implement e-tolls was based on poor planning and incorrect information.
- There were no viable alternative routes.
- Alternative models of funding are available, such as through the existing tax grants and/or the ring-fencing of a small fuel levy increase, which could be allocated to SANRAL to finance GFIP. Furthermore, Government has not demonstrated that these were properly assessed and seriously contemplated as alternatives to e-tolls.
- The e-toll administration costs were too expensive. In this regard, the contracted administrative costs just to operate the system came in at R8.20bn for a five-year period (see Annexure A signed September 2011).
- The contracted e-toll collection services process has given rise to extensive concern. In SANRAL's presentation to Premier Makhura's E-toll Socio-Economic Impact Assessment Panel in November 2014, slide #218 indicated that ETC had won the tender, with the operation services cost being R4.73bn over five years. However, three years earlier in September 2011, the contract with the ETC-JV for the operations services reflected a fee at R8.2bn over five years, some 75% higher than the R4.73bn in the tender.
- The high administrative costs related to e-tolls make the scheme irrational, in that it pushes up the cost to the public by 61%, bearing in mind that the finance charges of the R21.5bn bond including interest over 20 years equates to R2.6bn per annum.

- The irrationality is more perverse when one considers that Treasury could have easily financed this scheme using its current mechanisms that apply to over 19 000 km on non-tolled roads through allocations to SANRAL (R2.6bn / annum) and this option carries no additional administration fees.
- Furthermore if Treasury required additional funds from the public, this could be attained through a 10c increase in the fuel levy, which is an efficient user-pays scheme in that it too attracts ZERO administration fees.
- The public maintains the scheme's introduction legally flawed/ invalid in that:
 - The scheme's public engagement process was flawed and did not comply with section 1(c) of the Constitution.
 - The Minister of Transport failed to consider, alternatively failed to properly consider, one or more or all of the materially relevant considerations, for example alternative methods of funding.
 - The public's right to freedom of movement was infringed, due to the lack of alternative routes.
 - SANRAL's Board did not properly and lawfully resolve to declare certain roads tolled roads, alternatively failed to consider one or more or all of the materially relevant considerations i.e. alternative methods of funding, when approving the scheme.
 - The granting of the environmental authorisations was unlawful and invalid because they were materially defective.
 - SANRAL inability/ failure to invoice road users timeously or at all.
 - SANRAL is not lawfully entitled to levy or collect VAT on e-tolls.

SANRAL CEO resigns, reappointed and the Minister shipped out.

Following the interdict to halt the launch of e-tolls on 28 April 2012, a week later (8 May 2012), SANRAL's CEO Mr Nazir Alli tendered his resignation, setting the stage for a possible negotiated solution to the e-toll decision. However, this was abruptly terminated when a few weeks later, the Executive declined Mr Alli's resignation and confirming his continued role as the SANRAL CEO.

A few weeks later, on 13th June 2012, President Zuma redeploys the Minister of Transport (Mr Sibusiso Ndebele) and his deputy minister (Jeremy Cronin) out of the Transport Ministry in mid-term. Mr Ben Martins was appointed in his place and a year later, Minister Dipuo Peters.

On 4 May 2012, an Inter-ministerial committee (IMC) was formed to coordinate work related to the GFIP issue, to be chaired by Deputy President Kgalema Motlanthe. Other members of the IMC were the Ministers of Transport, Finance, Public Enterprises, the Presidency (Performance, Monitoring and Evaluation) and the DG in the Presidency. The IMC was also tasked with further retrospective consultation process with civil society organisations, to try and placate criticism. This effort bore little fruit in finding a solution to the impasse and in fact, never even produced an official report on its efforts on its findings.

A Costly Court Review ensues

Urgent recourse was also taken by Treasury to obtain a Constitutional Court ruling to overturn the interdict. The matter was heard in the Con Court on 15 August 2012 and ruled on 20 September 2012, wherein the Deputy Chief Justice handed down a unanimous judgement finding that the North Gauteng High Court had trespassed on the domain of a legitimate exercise of Executive powers and rescinded the interdict obtained by OUTA. In so doing, the Con Court was clear to announce they did not interfere in the judicial review process.

It is important to note that SANRAL argued in the Con Court in August 2012, that it was ready to start e-tolling within two weeks and it urgently needed to do so. Yet they failed to launch the scheme for another 15 months, despite being given the right to do so. In short, the scheme was never ready to launch, indicative of its administrative and regulatory challenges that were underway.

OUTA had no quarrel with the principle that the Court wished to underscore the necessary separation of powers between the Executive, Judicial and Legislative arms of government. Even though OUTA disagreed with the Executive decision to introduce e-tolling in the first place, they never questioned the prerogatives and powers of the Executive to execute.

NOTE:

Today, following five and a half years of operation since the e-toll scheme was launched in December 2013, it has become clear that the pre-conditions for a successful operations of e-tolling the GFIP were not present, and that it would have been prudent for the executive to have exercised its powers to instead follow a less risk-prone alternative. And, had the authorities applied a 10c increase in the fuel levy to fund the GFIP, by now, all the capital costs would have been raised and the scheme would have been a long way down the road to be fully financed, including interest. Instead, quite the opposite is true.

SANRAL, however, succeeded in November 2012 to also persuade the High Court to find against OUTA's review application, despite OUTA's assertion that SANRAL had "deliberately deceived" the public when the Minister proclaimed the relevant roads as toll roads. SANRAL's Counsel hit back calling for a crippling costs order to punish OUTA for alleged "vexatious motives" in making such an allegation.

On 13 December 2012, the High Court obliged and ruled against OUTA and awarded punitive costs order, which was a serious mistake by Acting Judge Voster.

On 25 January 2013, OUTA is granted its application for leave to appeal the High Court decision.

On 25 September 2014 the Supreme Court of Appeal (SCA) hears OUTA's case and two weeks later on 9 October 2013, the SCA overturns the punitive costs order against OUTA, and rules that it could not in law, condone OUTA's late application of the unlawfulness of the e-toll decision set aside and therefore, the court was not authorised to rule on arguments of alleged unlawfulness.

Legal rulings that appear to favour SANRAL, but quite the contrary.

OUTA's critics often espouse that OUTA has lost the court challenges to set aside the e-toll decision in 2012/13. However, this is far from the case. The fact is that the SCA and Con Court rulings both ruled that SANRAL was free to proceed to toll the public through its choice and mechanism of e-tolls, does not mean that these rulings bring an end to the legal challenge. Quite the opposite and this is explained as follows:-

It is important to note that the 2012 Application that was brought by OUTA (then known as the Opposition to Urban Tolling Alliance) was an application for judicial review regarding the e-toll saga.

A judicial review application is an application that can be brought against any decision of an administrative nature, the judicial review asks the courts to set aside a decision made by an executive authority (i.e. in these circumstances, government). One of the parameters of such an application is that the application must be brought within 180 days, after the decision was made.

Due to the fact that the Judicial Review Application was brought in 2012, five (5) years after the decision was made (in 2007), OUTA approached the court to obtain an extension of this 180 days period, to enable them to competently challenge the administrative action (decision) that was made, arguing that the decision was kept out of sight of the public at the time.

In terms of the Application, as referred to above, the Supreme Court of Appeal and the Constitutional Court gave judgment herein. The important parts of the judgments are reflected as follows:

The Supreme Court of Appeal held that: *“The stark reality remains that because of the delay in bringing the review application, five years had elapsed since the impugned decisions were taken, and that, during those five years, things have happened that cannot be undone. The clock cannot be turned back to when the toll roads were declared, and I think it would be contrary to the interests of justice to attempt to do so. It follows that the application for an extension under section 9(1) should, in my view, be refused.*

The result, as I see it, is that we are prevented by the provisions of section 7(1) of PAJA from embarking upon the merits of the review application.

In this light, it should be apparent that the 180-day time bar in section 7(1) is confined to direct challenges by way of proceedings for judicial review. It does not limit a [defensive or] collateral challenges at all. It is, therefore, both unnecessary and inappropriate to extend the 180-day time limit in order to provide for potential collateral challenges.

We cannot avoid that limitation to our authority simply because the same questions might arise were there to be future collateral challenges, the success of which is by no means certain, that are not before us.”

The Constitutional Court also held that: *“It must be added that this court is being asked to decide whether the interim interdict has been properly granted. If it were to do so, it would not*

usurp the role of the review court. That role will be limited to deciding the merits of the review grounds, something this court is not finally deciding.

In a dispute as the present one, this does not mean that an organ of state is immunised from judicial review only on account of separation of powers. The exercise of all public power is subject to constitutional control. For instance, if the review court in due course were to find that SANRAL acted outside the law then it is entitled to grant effective interdictory relief. That would be so because the decisions of SANRAL would in effect be contrary to the law and thus void.”

In short, the courts held that the extension of the 180 period in terms of a judicial review application should not be granted. It also held that although the judicial review was not granted, it could not preclude any further challenge regarding the constitutionality of the e-toll scheme and thus left a door open for any future challenge.

It is thus clear that even the Constitutional Court confirmed that the courts have not as yet given judgment regarding the constitutionality of the e-toll scheme and that in the event that future challenge is made, it will only then be able to give proper judgment in terms of constitutionality.

Since 2016, SANRAL has begun to issue summonses for e-toll defaulters. By mid 2019, some 2026 of these have mandated OUTA to fight on their behalf in a test case, which was placed on hold by SANRAL pending a solution to the impasse. A possible solution is being addressed by the authorities on instruction from the President, the deadline of which was indicated as the end of August 2019. The legal challenge is a firm hurdle that the authorities cannot wish away when contemplating a solution to the e-toll saga.

OUTA’s continued presence beyond the expensive 2012/13 court challenges enabled the public to challenge SANRAL’s false claims and propaganda, as well as empowering society to assert their constitutional rights to freedom of expression, access to information, privacy and other rights entrenched in the Constitution.

In doing so, the informed conscience of society enabled them to make better decisions on whether to buy e-tags or not, and whether they would denounce the scheme in a spirit of civil courage. After all, citizen and human rights do not belong to the government, but to the people. OUTA sought to promote a human-rights culture of civil courage on the ill-conceived e-toll decision.

3 Dec 2013: E-tolls are launched - The proof is in the eating.

The e-toll system eventually started on 3 December 2013, following fifteen months filled with regulatory changes and preparations because SANRAL failed to conduct a proper Regulatory Impact Assessment (RIA) initially. How SANRAL could have claimed readiness for a 30 April 2012 launch, let alone a year earlier in April 2011 (their first planned launch), is now patently nonsensical. In hindsight, OUTA’s legal challenges and delays to the e-toll launch had done SANRAL a favour. Had they launched in April 2012, the mess we are experiencing today would have been far worse. A substantive marketing campaign was launched in October and

November 2013, two months prior to the launch, enticing road users to tag up or face hefty punitive tariffs and criminal action if they didn't pay.

Enforcement – AARTO or Criminal Procedures Act?

Another major complexity that SANRAL faced, was the confusion over the regulatory framework for dealing with people who don't pay. The system was initially designed on the assumption that defaulters would be sanctioned under the Administrative Adjudication of Road Traffic Offences Act (AARTO), but when it became clear that this regulatory framework had not been adopted by all three municipal jurisdictions affected (Johannesburg, Tshwane and Ekurhuleni), it left problems of inconsistency and the only valid legislation that has uniform application, is the Criminal Procedure Act (CPA). This meant that non-payment of e-tolls was implicitly regarded as criminal rather than a civil matter. This heralded similar complications that the Prohibition faced in the United States of America in the 1920s: criminalising behaviour that cannot be sanctioned by due legal process invite greater problems. The legislation was passed to make the criminalisation the non-payment of e-tolls not only implicit but explicit.

SANRAL believed that since the Legislature had passed a law and the prerogatives of Executive Power had also been affirmed by the Constitutional Court, any further challenge to its determination to proceed would amount to disrespect for the rule of law. However, OUTA continued to assert that since its main legal argument (that the original tolling decision was declared unlawfully) has not been ruled upon and having gathered significant evidence thereof throughout the earlier legal case, it would prepare for that argument to be brought in a defensive challenge, when the first user of the e-toll pays was prosecuted for refusing to pay e-tolls.

The Taxi Industry Rejects SANRAL's "free passage" Offer.

Despite the announcement that taxis have free passage in February 2014, SANRAL's ability to provide the taxis with full exemption has come under pressure, and the National Taxi Alliance has denounced the e-toll plan as a result of its maladministration⁷. SANRAL also announced in March 2014, that 46,000 taxis in Gauteng had been registered and issued with their 100% exemption e-tags. This equates to approximately 42% of the estimated 110 000 taxis in Gauteng.

When OUTA conducted a thorough and random count of taxis with tags on their windscreens in August 2014, as well as in December 2016 at various taxi-ranks around the city, we found only one taxi displaying an e-tag installed in the vehicle. This is at complete odds with SANRAL's claims, leading OUTA to believe that while they may have delivered these 46,000 e-tags to the taxi associations after having registered them onto their system, these tags never found their way to the vehicles. The process to receive "free passage" on the e-toll roads seems to have been rejected by the taxi industry.

⁷ <http://www.timeslive.co.za/thetimes/2014/01/31/taxi-drivers-to-strike-in-protest-against-e-tolling>

A tale of many serious problems, many of which were predicted.

Believing that all necessary and sufficient conditions for the system to succeed were not present, OUTA cautiously monitored the launch and commencement of the e-tolling process to see if its predictions of the unworkability of the system would prove valid. It is important to note here that during SAVRALA's numerous engagements with SANRAL during 2010 and 2011, the myriad of expected administration challenges that society, SANRAL and law enforcement agencies would encounter, was discussed because the e-toll billing system would be relying on eNatis (The SA national vehicle registry system) to keep it updated, yet there was ample evidence that eNATIS was grossly inaccurate.

At the time, SANRAL denounced SAVRALA's concerns, implying that these matters would all be in hand by the time e-tolling got underway. Needless to say, we were not surprised when SANRAL listed some of these exact issues as being problematic for the system in February 2014. In addition, false & cloned license plates were becoming a bigger problem for the metro police & safety authorities, as announced by Johannesburg Metro Police spokesperson, Wayne Minnaar within a few months of e tolls.⁸ To excuse these issues as "teething problems" was disingenuous of SANRAL.

The Minister of Transport at the time (Ms Dipuo Peters) and the President (Mr Jacob Zuma) added their voices⁹ and also scolded SANRAL for the billing problems during a special sitting of the Parliamentary Portfolio Committee on Transport in the first quarter of 2014. SANRAL CEO at the time, Mr Nazir Alli, admitted these problems and contradicted his assertions made during the 2012 court process when he repeatedly assured the public that SANRAL was ready to efficiently commence e-tolling, barring a few "teething problems". This was a further indication of serious maladministration by SANRAL executives and a matter for the SANRAL Board and higher-level Transport Authorities to urgently address, because it signified how little research was done to assess the impact of (the well-known inaccuracies of) the eNatis system on the e-tolling process. OUTA raised its concerns that SANRAL executives merely blamed their problems on eNatis inaccuracies when they were warned of this problem and chose to play the issue down. As a State-Owned Enterprise, OUTA believed that Government as the "shareholder" should have held SANRAL accountable for the administrative demise of the scheme, especially since they had over 30 additional months since their initial launch date of April 2011, to assess and address the implications thereof and iron out problems. Five years after the e-toll launch, the administrative challenges and problems live on.

⁸ See this excerpt and YouTube clip with the spokesperson of the Johannesburg Metro Police (Mr Wayne Minaar): E-tolls exacerbates problems of false / cloned vehicle license plates:
<https://www.facebook.com/SABCNewsOnline/posts/10152155602946543>

⁹ <https://www.iol.co.za/news/south-africa/gauteng/e-toll-problems-being-addressed-SANRAL-1642470>

Billing errors a serious problem.

A list of the types of billing problems that gave rise to hundreds of thousands of billing queries is attached as Annexure C. It is also important to note that SANRAL's system did not set aside queried invoices from being billed. When users did pay their account, the system automatically settled the oldest invoices first, despite the fact that a disputed invoice might be the older invoice. This gave rise to untold problems and greater breakdown in trust in the system.

Furthermore, the seriousness of this lack of data integrity, the threatening messages from SANRAL's communications at the outset, along with the wasteful billing and costly litigation and issuing of summonses, has negatively affected the lives of hundreds of thousands of people from all over the country. From as early as a few months into the scheme's operations, large logistic companies and other businesses started to add their voices by complaining about the additional administrative burden related to e-tolls and condemning the fiasco. This has necessitated redirecting vital resources towards pricing challenges and more complex fleet management. These issues were also pointed out to SANRAL by SAVRALA in 2011, long before the scheme's launch.

SANRAL's deception and intimidation tactics raises ire of road users.

Since the launch of e-tolling on 3 December 2013 in Gauteng, a far more significant volume of freeway users refrained from registering with the system or fitting e-tags to qualify for the discounts than was initially envisaged by OUTA. By mid-2014, OUTA's research showed that compliance levels had peaked at 40%, confirming its prediction that the scheme was so unpopular, and its enforcement was so challenged, that the non-compliance levels was the scheme's most serious issue and reason for failure. And the more those who were paying realised they were in the minority, the non-compliance began to get worse, leaving SANRAL in a quandary as to how it was going to manage this dire situation. This development certainly made a mockery of their supposedly efficient and effective "user pays" scheme.

SANRAL chose at first to persuade the public to come on board through a multi-million rand advertising and PR campaign, which ran throughout most of 2013 and 2014. Part of this campaign included threatening SMS and e-Mail messages, along with media statements to intimidate non-tagged users to get e-Tags and pay up, or face amongst other things:- criminal prosecution; vehicle licences not being renewed, driver's licences not being renewed; bad debt black-listing; etc. The public remained defiant.

In 2014/15, SANRAL parked their e-toll collection vehicles alongside Gauteng Traffic Police roadblocks at on/off-ramps to the freeways, in an attempt to intimidate road users to become compliant. This initiative also fell short of having the desired effect of driving e-toll compliance in the right direction.

OUTA's view is that SANRAL's arrogant and offensive tactics employed throughout the scheme's existence only served to widen the divide between the people and the State over the e-toll issue. Adding to the divide were thousands of billing errors, inconsistencies in the

application of the scheme's tariffs, hacked databases and misleading statements about the system's success. This left users astonished, angry, bemused and more resilient over defying the scheme and SANRAL with mounting outstanding bills and credibility problems.

OUTA and the media¹⁰ had also previously exposed SANRAL's deliberate deception and misinformation over e-tag penetration made by their spokesman, Vusi Mona in July 2011¹¹. Again, later in the same month, Mr Mona made grossly misleading public statements about how many kilometres or gantries one would need to traverse to achieve the maximum cap of R450.00¹². Misleading statements and claims of this nature cause serious damage to the credibility of the State and its institutions.

In OUTA's opinion in Mid-2014, around 60% of the Gauteng Freeway users had evidently exercised their right to freedom of choice as non-registered "alternate users" and to risk the consequences thereof. History shows that compliance levels only peaked at 40% and declining to around 25% by 2019, a far cry from the yields that SANRAL needed to achieve (closer to 90%) for the system to become viable.

Offers of 60% discount fails to bring people on board.

In November 2015, SANRAL decided to offer a 60% discount/ debt write-off for those motorists who chose to come on board and who remained compliant to the scheme going forward. In this initiative, SANRAL gave the motorists six months to take up this offer and also offered six months to pay off the outstanding debt. This "Less-60%" project was designed to entice all defaulting motorists to come on board. It however failed dismally in that it only raised R139m (less than 2% of the outstanding debt) and compliance levels continued to decline thereafter. The public had sent a clear message that this scheme was not being rejected for its tariffs, but for its existence.

The extent of a "Failed Scheme" was clear within a year of operation.

OUTA's earlier assessments and submission to the Makhura Panel in 2014 called for an urgent intervention by the Transport authorities to arrest what has become an embarrassing fiasco for the country within the first year of its operation. Five years on in 2019, OUTA makes the same repeated call that it is never too late to undo a bad decision and to apply alternative funding mechanisms which, if adopted at the outset, would have negated the current debt levels experienced by SANRAL.

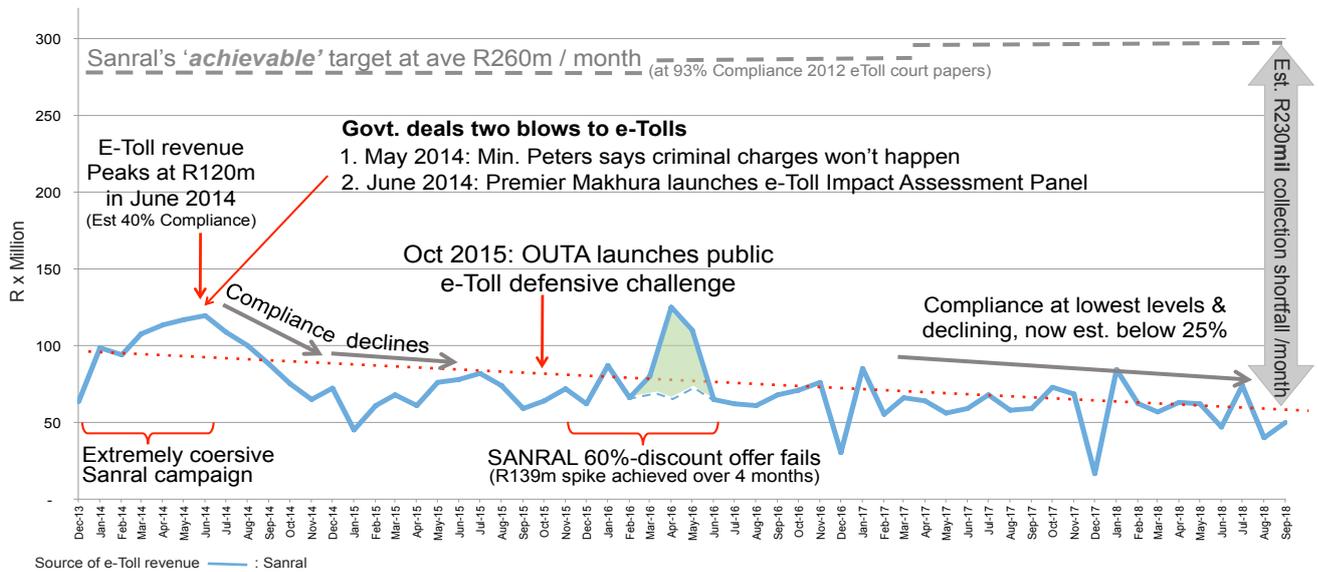
The graph below shows the decline of revenue from SANRAL's e-toll scheme, as well as a number of incidents that arose along the way and the gap between actual and the expected revenues required to generate 93% compliance levels.

¹⁰ http://www.itweb.co.za/index.php?option=com_content&view=article&id=65332 and <https://www.itweb.co.za/content/BO2rQGMAQANMd1ea>

¹¹ Vusi Mona claimed a 60% growth in e-tag sales as a result of their marketing campaign. OUTA pointed out that their figures were incorrect, but SANRAL remained silent on their disputed claims.

¹² Vusi Mona's false claims on charges and gantries passed: <http://www.oua.co.za/site/SANRAL-continues-to-mislead-public-on-etolls/>

Timeline of e-Toll failure...



Government in a meaningless litigious war with its citizens

SANRAL had decided and communicated that it would pursue the issuing of legal summonses as early as June 2014. However, it only began to file summonses against e-toll defaulters nearly two years later in April 2016. Over the next three years, SANRAL’s lawyers proceeded to serve notices of final demand, followed by summonses to thousands of individuals and businesses through the high court and regional courts.

Within days of the process unfolding, members of the public contacted OUTA for advice and OUTA reminded the public that one of its purposes was to assist them in a defensive challenge for as long as it was able to do so, resources and funds permitting. This required that the individual / business signed a mandate to OUTA to manage the summons on their behalf. This led to the development of an agreement between OUTA and SANRAL’s lawyers to introduce a “Test Case” comprising of a few defaulters cases to be tried. It was pointless for the courts to be inundated with thousands of e-toll default matters, especially in light of the fact that there was a constitutional matter that needed to be heard that related to the lawfulness of the e-toll scheme’s introduction and there were hundreds of merit issues that the courts would need to hear relating to each case.

Accordingly, a Case Manager was appointed by the Deputy Judge President of the Pretoria High Court and all summonses mandated to OUTA would be suspended pending the test case. Of the estimated 15,000 summonses that SANRAL claimed to have issued, only around 3,000¹³ were formally served and of these, 2,125 members of the public mandated OUTA to handle their summonses on their behalf by mid-2019.

¹³ Confirmed in PMG minutes of answers to Question 2673 in the National Assembly.

On 27th March 2019, SANRAL alerted the media¹⁴ that it had held an urgent board meeting to place a “temporary halt” on the collection of debt and serving of summonses. This was supposedly due to a request from the President that until a solution to the e-toll issue had been attended to, the SOE should suspend e-toll debt collection. This issue was more likely triggered by a combination of:- (i) public outcries of default judgments now coming to the fore, as a result of SANRAL’s summoning process against members of the public not being handled by OUTA’s test case and; (ii) the fact that the Credit Bureau Association issued an announcement on 20 March 2019¹⁵ that e-toll default judgements would not feature on their members credit ratings blacklists; (iii) the looming national elections which was a hot issue for the voters in Gauteng.

At the time of this report in August 2019, nearly five months had passed and the litigation process of the OUTA / SANRAL “Test Case” has been put on hold as a result of SANRAL’s decision. The effect of this delays has made a mockery of the process and placed more doubt on Government’s legitimacy surrounding the e-toll decision.

5. GAUTENG’S E-TOLL CHALLENGES

Although questions still need to be answered with regard to the high cost of construction of the GFIP and preferably through an independent enquiry, from OUTA’s conversations with many critics and detractors¹⁶ of the Gauteng e-toll project, it is clear that they all understand and accept that the bonds for upgrade have to be paid. The hotly debated question is how? What other methods of raising funds were available, and which was the most equitable? Which option would pose the least financial and other burdens on society, balanced against the long term need for the urban economy to become ever more productive?

OUTA believes that had a meaningful and widespread interactive planning process occurred before the e-tolling decision was taken in 2007, SANRAL and the Government may very well not be in the impasse and position it now finds itself in.

Some of the problems the system experienced ever since launching (many of which were raised as possible problems long before the scheme’s launch) are:-

- An inaccurate vehicle ownership registry (eNatis) database is relied on to feed vehicle ownership data into the SANRAL e-toll system. The more inaccurate the eNatis system is, the more incorrect the invoicing of thousands of e-tolls

¹⁴ <https://www.news24.com/SouthAfrica/News/breaking-SANRAL-suspends-process-of-pursuing-e-toll-debt-20190327>

¹⁵ <https://ewn.co.za/2019/03/20/credit-bureau-clarifies-gauteng-motorists-not-paying-e-tolls-cannot-blacklisted>

¹⁶ Numerous statements on record from Labour unions; the Southern African Catholic Bishops Conference; the South African Council of Churches; Business formations; Opposition political parties; Academics; the Media and Civil Society leaders; Political Representatives and former SANRAL executives,

transactions is, giving rise to billing enquiries and disputes that add significantly to the administration costs and reduced payments. Inefficiencies arise from the slow process of vehicle ownership changes, even when the proper update of system information happens. Every day the vehicle ownership details are delayed, it leads to the previous owner being billed. This issue alone is an extremely serious problem for the SA e-toll system. Furthermore, this had an impact on the success rate when it came to serving summonses on defendants which was low.

- Inaccurate readings of the type of vehicle, which leads to the system generating inaccurate billing from the incorrect size / class of vehicle using the road. Large cars in a Class A2 (sedan) vehicle are often billed for a Class B (truck) because it was towing a trailer, or had a load in the vehicle etc. Trailers and caravans which are supposed to not attract e-toll bills, receive invoices for payment on a regular basis on the e-toll scheme.
- False license plates, tampering and / or cloning of other vehicle license plate (a very easy crime to commit in SA), gives rise to many incorrect bills and people receive invoices for the movement of other vehicles. This is a significant problem in Gauteng and was exacerbated by the advent of e-tolls.
- The extremely onerous dispute resolution mechanism introduced by SANRAL, requiring affidavits to be compiled and submitted for queries on billing errors. Many people could not be bothered with the process and simply stopped paying after raising queries with SANRAL that went unanswered or unresolved.
- Complex pricing and discounts system.
- High and unmanageable levels of non-compliance due to public lack of trust in the system and Government.
- An inability to process or convince the public transport and taxi industry to comply with the systems requirements and to qualify for free passage on the e-toll routes.
- Due to Postal Service inefficiencies, SANRAL was unable to post e-toll invoices to reach road users in time to pay and qualify for discounted tariffs.
- Conflicting messages from differing levels of Government (National vs Provincial), adding more weight to Government's crisis of legitimacy.

High Compliance Was Required From Outset

International experience with e-toll based revenue collection innovations suggests that if more than 15% of users default in payment and are not aptly and justly sanctioned, the system is heading for trouble. This factor is indicated by experience in the Portugal SCUT e-tolled roads system, which was problematic at 19% non-compliance¹⁷. It must be noted that this article on the failing e-toll system in Portugal, was brought to SANRAL's and the Transport

¹⁷ See article and quotes from Estradas de Portugal (EP) roads chief António Ramalho reflected in The PortugalNews.com <http://www.theportugalnews.com/news/dead-loss/28626>

authorities' attention by OUTA through the South African media in June 2013, some six months prior to Gauteng's e-tolling system being turned on. One would imagine that lessons from this fresh example of what might and could have transpired in South Africa, would have elicited prompt action by SANRAL to send a team of experts to Portugal, to learn about the issues and problems within the Portugal system, before switching the system on in Gauteng. There was no evidence that SANRAL undertook such action.

It appears within the first year of operation, SANRAL abandoned their initial compliance level target of over 93% (as indicated during the responding affidavits by SANRAL during the OUTA court challenge of 2012), and they revised their targets of e-tag take-up and payment threshold at a much lower rate. However, SANRAL's downward revised projections were never achieved, and each time they revised their revenue projections lower, they failed to achieve them, leading to four downward revisions of their revenue projections until May 2016, whereafter they stopped sharing a revised forecast with the media.

Notwithstanding the many warning bells and concerns that could lead to its failure, SANRAL asserted that they had the mandate to go ahead and displayed excessive confidence in their own judgement. "The proof is always in the eating" as the saying goes, and now with an almost 6-year history of the e-tolls failure to collect the funds due and a continued declining compliance, the e-tolls decision has left the State holding the baby and has placed the public purse (the guarantors of the SANRAL bonds) at risk. In terms of corporate governance principles, the SANRAL board of directors has left the Gauteng provincial and the national governing authorities with a serious crisis in low public confidence and negative socio-economic impact on the province.

Society has consistently remained within its rights to require that the higher level authorities insist that the SANRAL board explains why it did not hold its Executive Officers who discharged the agencies constitutional requirements at the time, accountable for the failure to meaningful engagement with stakeholders, conducting thorough research and taking heed of the pertinent issues and warnings offered both from advisors and critics. It was this very failure by SANRAL's executives that paved the way for society to oppose the e-toll decision and the basis of resistance as provided below.

GROUNDINGS FOR OPPOSITION TO E-TOLLING OF GFIP

1. The rationale for the decision of the e-toll proposal was neither transparent nor convincing:

In their paper, "Intelligent Transport Systems (ITS): Privacy, security and societal considerations within the Gauteng case study"¹⁸ (2013) Erin Klazar (nee Hommes) and Dr Marlene Holmner refer to a report that was commissioned by SANRAL (some two

¹⁸ <https://repository.up.ac.za/handle/2263/40395>

years *after* the approval of the e-toll decision to finance GFIP), by Standish, Boting and Marsay¹⁹(2010). In the Standish report, emphasis was made that inadequate transport networks would constrain the economic development potential of Gauteng, and that an improved road network funded by a user-pay system may improve the long-term economic development prospects while ensuring a “fairer” system for road users.

SANRAL claims they followed due process required of them, prior to the decision being taken in 2007/8. OUTA argues that by placing one advert in six regional newspapers in October 2007, allowing the minimum period of 30 days from 14 November to 14 December 2007 for the public to comment was grossly insufficient, and as a result, only 28 responses were received from 3.5 million motorists in Gauteng. This process was repeated once more from April to June 2008 for the R21 section of the freeway, for which only two responses were received.

SANRAL’s response in court was to also refer to several mentions and press clippings about their plans to toll the GFIP as if to imply this as being meaningful dialogue and engagement with society on the matter. Furthermore, we asked why no invitations for thorough engagement sessions were forthcoming from SANRAL to large fleet management organisations prior to the e-toll decision, such as South African Vehicle Rental and Leasing Association (SAVRALA), Road Freight Association (RFA), the Retail Motor Industries (RMI), and other pertinent entities. SAVRALA members together form the biggest body of vehicle buyers in the country. Neither the representative body nor their constituent members were ever meaningfully consulted on the plan. In addition, SANRAL failed to meaningfully engage with organised labour and disadvantaged organisations such as the QuadPara Association of SA (QASA), who represent people with disabilities and already experience a severe constraint on their right to freedom of movement.

Inadequate Public Transport:

Gauteng’s public transport infrastructure is currently inadequate to cater as an alternative to even a small percentage of the current 2,5 million freeway users. In 2014 at the time of writing OUTA’s first paper, according to the Gauteng City-Region Observatory, a partnership between the City of Johannesburg and the two universities of Witwatersrand and Johannesburg, only 10% of commuters make use of bus and train services while 42% make use of the city’s Minibus Taxi system and 42% use cars. One would be fairly confident to say that the current public transport network in Gauteng is sufficiently inadequate to convince a sizable portion of private vehicle users to convert to public transport options to get to and from work and meetings in Gauteng, not only due to reliability and limited expansiveness of the bus and train networks, but also the safety concerns.

Although the **Gautrain** links 9 stations between the two cities of Pretoria and

¹⁹ Standish, B.(2010). *An economic analysis of the Gauteng Freeway Improvement Scheme*. Report for SANRAL

Johannesburg with OR Tambo International Airport in a narrow North / South corridor, and serves around 50,000 commuters per weekday, this being less than 15% of the daily road commuter traffic between the two cities²⁰ and less than 3% of the total Gauteng freeway users. Until the rail network expands to cater for West – East and other corridors, and unless the train tariffs are reduced to serve a larger portion of the population, the Gautrain cannot be regarded as an affordable or convenient public transport alternative for the majority of citizens who currently rely on minibus taxis and private cars to commute to and from work over the Gauteng freeway network.

Moreover, the Gautrain is not generating sufficient revenue to meet its obligations and as another embodiment of the “user pay principle” appears to be way below the requisite number of users who can pay the fares to make it profitable and as such, it is being heavily subsidised by grant income to around R2bn per annum (see Gautrain Financial Statements 2018/17), which substantively negates Governments application of “user pays” principal in this mode of public transport.

The lack of public transport alternatives was highlighted as a contentious issue and a problem to SANRAL, in the socio economic report²¹ drafted for SANRAL by Dr Neville Bews & Associates.

2. Economic equity of e-tolls vs. the fuel levy in South Africa.

With a significant reliance on vehicle usage for daily commuting, the question arises as to how social infrastructure should then be funded in this context of pressure being placed on the national fiscus for broader and pressing challenges. To date in South Africa, urban road “social” infrastructure and over 19,000 km of non-tolled roads under SANRALs control, has been paid through national treasury allocations, which it can be argued is boosted by the equitable “user pays” mechanism of the fuel levy, which dictates that the more you drive, the more you contribute to the fuel levy.

The Fuel Levy table provided in Annexure D²², provides one with an overview of the revenues generated by the fuel levy in South Africa. From this table, one will see that since the decision of the GFIP was made in 2007/8 Tax Year, the fuel levy revenues have tripled from just under R23.7bn to an expected revenue of over R77bn in the tax year ending March 2019.

Until the introduction of the “drive-now-pay-later” e-tolling system on the Gauteng freeways network in 2013, this was an unknown concept to South Africa, and its

²⁰ Business Report. 17 December 2013.

²¹ http://www.socialassessment.co.za/gauteng_freeway_improvement_project.pdf

²² See Annexure D, graph of fuel levy revenues and fuel liters sold over past decade.

success relied on several factors, the most important of all being:

- High degree of compliance through willing public participation.
- Workability – from very efficient toll administration systems, including reliance on an efficient and cost-effective postal service.
- Reliance on accurate external information systems – e.g. eNaTIS & AARTO.
- Practical and efficient enforcement, to ensure that defaulters can be managed and encouraged to pay their way to keep compliance levels high.

Questions around the true e-toll collection costs

There is substantive debate surrounding Gauteng's e-toll administration costs. SANRAL presented an e-toll collection administration cost of R12bn (or 17% of the revenue generated at 2008 prices) over the 24-year period in its court papers of 2012. However, based on the contract for e-toll operations with the Electronic Tolling Company JV (ETC) signed in September 2011, the amount of the contract was R9.9bn, of which R8.2bn pertained to Operations Services (and R1.3bn toward the system design and build element and; R0.4bn for Asset Replacement fee). When assessing the portion of R8.2bn for a 5-year period for the cost of e-toll Operation Services, a very different picture is painted. Taking this amount on a per annum basis, this equates to R1.64 billion per annum or around R39.4bn over 24 years.

Compare this with the R21.5bn bonds that require financing, and one begins to realise that the e-toll operations services (i.e. administration costs) amount to around 60% of the cost of servicing and writing down the bond (over a 20-year period), which is grossly excessive. The fact that ETC never received this amount is because a large percentage of the public refused to pay toward the scheme. The fact of the matter is that SANRAL was liable to pay this amount over to ETC, had the collection process gone according to plan.

Making matters worse, was the fact that SANRAL presented to the Gauteng E-toll Impact Assessment Panel (convened by Premier Makhura) in September 2014, (in slide # 218) that the ETC tendered amount to operate the e-tolls scheme amounted to a total of R6.2bn, of which R4.7bn covered the operational costs for the five-year tender period. This shows a difference of roughly R700 million per annum between the tendered amount and the contract amount. To date, no meaningful explanation has been provided for the difference, giving rise to more reasons of mistrust between citizens and the State.

National Fuel levy logic

Standish *et al.* (2010)²³ in their report to SANRAL, acknowledges that the fuel tax is the most efficient in terms of an immediate cost to benefit relationship because no additional collection costs are necessary to fund the admin and operations of tolling.

²³ Standish B. (2010). *An economic analysis of the Gauteng Freeway Improvement Scheme*. Report for SANRAL, see www.nra.co.za,

SANRAL argues that, since the national fuel levy would have to be applied uniformly to all motorists, non-Gauteng motorists would be unfairly paying toward the upgrade and maintenance of Gauteng roads that they do not use. However, this argument rests on a false assumption, which fails to take into account the fact that the entire country stands to benefit from a more productive and efficient Gauteng economy, which translates to the benefit of South Africa as a whole. In other words, these are South Africa's roads, not just Gauteng's.

The Organisation for Economic Co-operation and Development (OECD), in a 2011 report, states that the Gauteng region contributes 34% to South Africa's Gross Domestic Profit (GDP). In addition, 52.2% of national research and development takes place in the province. As a result, 75% of Gauteng's tax contributions to Treasury flow out of this region for the benefit of other provinces. Clearly the rest of the country benefits from Gauteng's productivity, which is aided by improved freeway networks.

Moreover, the opening page of the Cabinet Memorandum (from DoT) in July 2007 on the GFIP (see Annexure E), stated in the opening summary the following: *"The state of the freeway system in Gauteng is a concern not only for Gauteng but for South Africa as a whole. Contributing 38% of the country's GDP, Gauteng is the economic hub of South Africa. The conditions of its freeways have been gradually deteriorating over the years due to reasons including high exposure to heavy vehicle traffic, pavement age, no freeway expansions and limited resources."*

The fuel levy as an option to fund the R21.5bn GFIP Bonds should not be ignored as it carries the following advantages:-

- a) it is a direct user pays methodology – i.e. every time a vehicle's engine starts, it contributes to the fuel levy,
- b) the Gauteng Freeway system impacts positively on the entire country and should not be seen as Gauteng's roads, but rather South Africa's roads
- c) this methodology attracts **zero** administration fees, when compared to the ETC contract reflecting R8.2bn (5-years) to fund the collection process. Furthermore, while Treasury has repeatedly indicated that it chooses not to ring-fence fuel levies, this does not mean it cannot do so.

OUTA commissioned well know economist Azar Jamine from Econometrix to test its view on the extent of fuel levy increase required, should this be an option contemplated. In the Econometrix report²⁴ their calculations shows that if the fuel levy was applied in 2012, the GFIP bonds could have been adequately funded from a fuel levy of 11c/Litre. Furthermore, if the bonds required settling from today, including the outstanding interest, a 14c increase in the fuel levy would suffice.

²⁴ Econometrix Report: Options for using the fuel levy to repay SANRAL Loans

3. Road expansion induces road demand and further congestion:

From the outset, mitigating against the success of e-tolling in Gauteng was the practical reality that public transport simply did not exist as a viable alternative. The congestion problem was atypical of situations where tolling has worked in other cities, in that Gauteng's e-toll plan was never intended to solve an inner city congestion problem and it did nothing to reduce the use of motor cars in the province. In fact, the wider GFIP further elevated the use of cars by providing wider roads and faster intersections, and gave rise to the known phenomenon of "Induced Demand"²⁵ or Induced Congestion whereby wider less congested freeways, in the absence of alternative safe and reliable public transport, merely attracts more vehicles onto the freeway network, thereby inducing freeway congestion to similar levels within a few years. This is precisely what has happened in the case of GFIP, whereby congestion levels on Gauteng's freeways by 2018, are where they were (or probably worse) in 2008, prior to the expansion of GFIP Phase-1.

Furthermore, a study conducted on Intelligent Transport Systems in transitional and developing countries by Shah and Dal (2007)²⁶ found that construction of ever more efficient road networks leads to "induced demand". In systems-thinking terms, this is referred to a loop of self-reinforcing "positive feedback". Extending and expanding existing road networks invites further motorisation, which in turn leads to increased congestion and greater safety issues, and the need for yet further extension projects. The ever-increasing burden leads to the society moving further away from the desired need of an integrated public transport system. Besides the burden on the environment, the quality of life suffers.

Using data from 24 California freeway projects across 15 years, Robert Cervero²⁷ found that; *"Roadway investments spur new travel and in effect, fail to relieve traffic congestion, known as induced demand. Traffic increases are explained in terms of both faster travel speeds and land-use shifts that occur in response to adding freeway lanes and simple mode structures have often been used to reach the conclusion that road investments provide only ephemeral congestion relief, with most added road capacity absorbed by increases in traffic. Based on model outputs, it generally takes 2 to 3 years for development activity to respond to the addition of lane miles, and another 3 years for urban business and residential development activity to take place along new nodes or improved traffic corridors."*

²⁵ https://en.wikipedia.org/wiki/Induced_demand

²⁶ See Shah, A.A. and Dal, L.J. 2007. Intelligent transportation systems in transitional and developing countries. IEEE. August 2007: 27-33.

²⁷ Cervero, R. (2001). University of California Transportation Center *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*.

4. Weak Economic Arguments for e-tolls:

Dr Roelof Botha, an academic economist and strong advocate for e-tolling has argued that the time saved by users of a decongested road network has a significant productivity benefit that he quantifies in financial terms as R2.1 billion annually. The long-term boost to the SA economy would by his calculation be some R26.5 bn over 20 years, (assuming 5% inflation), "which is 32 percent higher than the total cost of the project". He assumes that this value of economic productivity for the average freeway users is generated from time saved and other vehicle running and maintenance costs, which computes at a benefit to cost ratio of 8.4:1. This claimed benefit was sourced from the Economic Analysis of the Gauteng Freeway Improvement Scheme, prepared in August 2010 by the Graduate School of Business (University of Cape Town) for both the South African National Roads Agency and the Provincial Government of Gauteng. Their research made use of input compiled from a 2007 feasibility study on behalf of SANRAL. This ratio was also presented in 2011 GFIP Steering Committee Report.

This return has been downplayed by many other reputable economists (Chris Hart and Azar Jammine and others) as well as being questioned by members of the public who comment in online articles. SANRAL has also had the benefit of eight years since the completion of the GFIP (since 2011) to measure and confirm the cost to benefit ratio claims for freeway users, but they have not done so yet. Furthermore, the validity of such projections relies on assumptions that the public transport system will provide a viable alternative to keep the e-toll roads uncongested throughout the period and that users will pay the e-toll bills. None of this has transpired and the GFIP infrastructure is as congested today as it was a decade ago before the freeway upgrade began.

Furthermore, on 31 October 2011, the Minister of Transport (Mr Sibusiso Ndebele) replied in the National Assembly, to a question posed by the Democratic Alliance (Question no. 2598), which questioned the claimed 8,4:1 benefit to cost ratio of the GFIP project. Minister Ndebele responded as follows:-

"As can be seen, the key assumption of the 2007 feasibility study was that the GFIP project would reduce congestion. In my considered view, and in retrospect, the original feasibility study did not sufficiently weigh up international evidence suggesting that freeway expansion often does not – in the medium term – resolve congestion challenges, and often induces greater demand.

It also failed to consider alternative solutions to congestion – improved public transport provision, moving more freight onto rail and a curb on urban sprawl. The project benefits to road users may, therefore, unfortunately not be forthcoming. This is the subject of further assessments and consultations by the Department of Transport and a Cabinet task team."

5. An Odious “Double” Taxation.

It would appear from the significant resistance across all sectors of society within Gauteng and other parts of the country that the introduction of e-tolling on an existing urban freeway system that has already been paid for, amounts to double taxation. This becomes more problematic when applied to public infrastructure on which citizens rely to commute daily to work and back so as to earn a living, and in the absence of a safe, reliable and efficient integrated urban transport system. They pay taxes on their earning and have the right to benefits. Urban roads are not the occasional routes one takes on holiday or to visit other cities. This factor alone is a strong motivator for urban commuter road development to be funded using general and fuel levy taxation.

Furthermore, this logic is supported by the recommendations in the **Presidential Review Committee Report** on State Owned Entities in May 2013²⁸, which stated in recommendation #21 that *“Funding of social infrastructure, including roads, should have less reliance on the ‘user pays’ principle, and more on taxes.”* This approach not only allows for people to commute to and from work but also places of worship, sports, schools and recreation without being constrained by affordability and onerous conditions which detract from their quality of life, prosperity and productivity in the urban environment - the precise purpose of social infrastructure.

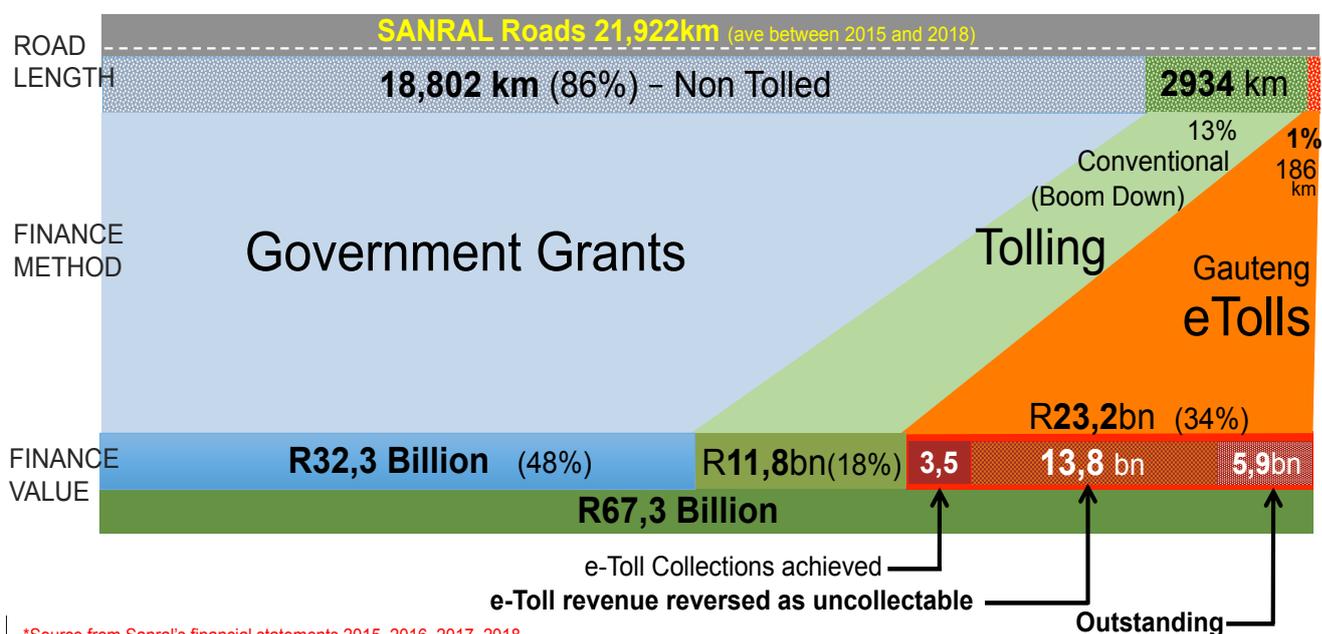
Gauteng e-tolls is a “USER-OVERPAYS” scheme.

The pictogram (next page) depicts the extent of revenue that SANRAL would have earned (34%) from less than 1% of their road network, over a four-year period as sourced from SANRAL’s financial statements ending 2015 to 2018.

SANRAL’s financial statements shows that during the four-year period, e-toll billing amounted to R23.2bn. This equates to 34% of SANRALs total income of R67.3bn for the four-year period, when taking into account that during this same period SANRAL received R32.3bn from Government grants to manage an average of 18 802 km of SANRAL’s Non-tolled portfolio. The State owned tolls covering 2 934km, accounted for R11.8bn (18%) of SANRAL’s revenue for that period.

The civil disobedience campaign gave rise to SANRAL having to impair (write off) R13.8bn of e-toll “revenue” in that 4-year period and in effect, they were only able to collect R3.5bn (a mere 15%) of the e-toll charges billed over the period. A further R5.9bn outstanding e-toll income, much of which will probably be impaired in the 2019 financial year.

²⁸ See page 21 of the Executive Summary of the report:
http://www.thepresidency.gov.za/ElectronicReport/downloads/volume_1/volume_1.pdf



*Source from Sanral's financial statements 2015, 2016, 2017, 2018

Essentially, had all users paid e-toll bills invoiced to them during this period, SANRAL would have collected 34% of their revenue from 1% of their road network based in Gauteng. On top of this, during this same 4-year period, the Gauteng motorists are estimated to have contributed approximately R85bn toward the fuel levy, which went directly into Treasury's tax receipts. This is regarded as an overcharging / double taxation of the Gauteng motorists.

It is important to note that had SANRAL received the R23bn e-toll revenues charged to the motorists, according to the contract with ETC, the Austrian based toll collection company would have been paid around R6.4bn of that income for their services over the 4 year period and we estimate they would have profited around R3bn of that income, as one can assume that most of the R3.5bn collected in this period was paid to ETC for the collection process, which we take has covered their operating costs for this period.

6. High cost of road construction.

Until such time as the authorities conduct an independent investigation into the apparent excessively high road construction costs of the GFIP, the public have every right to stand off against this unnecessary increased debt placed on them by Government's/SANRAL's lack of professional oversight. Those responsible for this odious additional debt to society have yet to be held accountable.

As late as January 2008, the same year that SANRAL started constructing the GFIP,

their own CEO, Mr Nazir Alli had indicated in SANRAL's motivation to the Minister of Finance that the GFIP construction costs would be R11.7bn, some R5.6bn (52%) lower than the final cost.

As economist Mike Schussler says in his report²⁹ of April 2011 compiled for the Road Freight Association (RFA): *"Indeed, if the costs of the GFIP are inflated excessively, due to inefficiencies or other factors during the commissioning and construction processes, it will be inappropriate for SANRAL to simply transfer the excess costs to the commuter and commercial road freight industry."*

7. A Lack of Trust in SANRAL

Due to SANRAL's incessantly misleading communication and arrogant position on e-tolls, the media was awash with criticisms, complaints, angry protests, blog sites, polls, songs and jokes, all of which indicated a society united in their disgust and rejection of the system.

We argue that it was largely SANRAL's manner of e-toll implementation, including their shocking communications drive, grossly misleading statements, lack of research on the damaging effects of non-compliance, a poorly prepared or inadequate regulatory environment, the high costs of the system that gave rise to its failure and has in turn left the SOE and Government (thereby the tax-payer) a lot poorer.

The continuous lack of transparency displayed by SANRAL in the lead up and early years of e-tolls has eroded the very quality that is needed from the human/behavioural subsystem: **trust**. Accordingly, any attempts to solve the strategic and operational problems will ultimately be an exercise in futility, and the impasse will continue.

6. FACTORS FOR SUCCESSFUL "USER-PAY" I.T.S.

The Department of Information Sciences of the University of Pretoria proved very helpful to help OUTA put things into a wider perspective.

"Some documented success factors for the implementation of Intelligent Transport Systems (ITS), include the presence of strong advocates and public support; weak opposition; a single agency overseeing the project; a good public transportation system in place; simple and affordable pricing systems using proven technology; environmental monitoring and protection;

²⁹ <https://www.politicsweb.co.za/documents/gauteng-tolls-mike-schusslers-analysis>

and comfort factors that create confidence amongst users (Carnevale & Crawford 2008; Jarašūniene 2010)³⁰.” Dr Marlene Holmner and Mrs Erin Klazar (nee Hommes). University of Pretoria Department of Information Sciences.

From the academic literature on Intelligent Transport Systems, University of Pretoria researchers Klazar (nee Hommes) and Holmner, have identified **eight success factors**, which OUTA take to be critical for any e-tolling venture to successfully innovate the conceptual invention of an Intelligent Transport System in any context. Based on Klazar (nee Hommes) and Holmner’s abbreviated listing, OUTA has amplified them into eight affirmative statements of importance. OUTA makes no claim that these are the last word on the matter, but we have been surprised and encouraged that so far these have not been challenged. In due course, they may be, in an appropriate academic discourse, and we look forward to their further refinement.

1. Public support needs to be extremely high with strong advocates promoting acceptance.

There is ample research done prior to the e-toll launch as well as after launch, which pointed to high levels of public rejection of the scheme. Public acceptance is a critical factor for the successful implementation of the scheme and with many indicators and polls pointing to public rejection, SANRAL failed to take heed of this critical success factor which, had its leadership conducted sufficient analysis and research thereof, should have led them to taking a decision at an early stage to recommend a revision of the decision and probably cancellation of the scheme.

The professional research organisation, Ipsos, conducted research³¹ in November 2013 in the lead up to e-tolls launch, which displayed the public sentiment of low support to get e-tags (38%) and the public’s opinion to have the roads funded by alternative means (58%). While this research showed apprehensive negativity and high anticipated levels of non-compliance prior to the launch, as it turned out the resistance was far greater, despite SANRAL’s threats of prosecution.

Moral courage to defy user-pays schemes will always be heightened when there is a lack of trust in the entity managing / responsible for the scheme, which was exacerbated in SANRAL’s case by their dismal and meaningless public engagement program conducted in 2007/8, along with SANRAL’s lack of transparency, numerous confusing claims on e-tag sales³² and embarrassing PR blunders.

³⁰ Klazar (nee Hommes), E and Holmner, M, June 2013. Intelligent Transport Systems: privacy, security and societal considerations within the Gauteng case study. In *Innovation: Journal of appropriate librarianship and information work in Southern Africa*. Issue 46, UKZN.

³¹ <https://www.bizcommunity.com/PressOffice/PressRelease.aspx?i=176810&ai=104173>

³² Misleading e-tag sales from SANRAL, reported by ITweb on 1 July 2013: http://www.itweb.co.za/index.php?option=com_content&view=article&id=65332

The signs of negative public sentiment toward the scheme were also clearly displayed during three public engagement sessions held by SANRAL and the Department of Transport in November 2012 to try and win over support after the fact. At the time, the Government Gazette (#35756 & 35755) published the proposed tariffs and exemptions and invited public comment. More than 12,000 submissions were made. This is one of the highest public submission responses ever to a notice in the Government Gazette at the time.

Given that the system relies on personal information of users, it is especially important that any threats to the right to privacy are countered by strong advocates from academic and civil society circles. Only a few academic economists and consultants have been willing to endorse the GORT. Furthermore, overwhelming feedback by most businesses and organisations to Premier Makhura's E-toll Impact Panel in 2014 opposed the scheme.

2. Oppositional forces must be weak.

When the tolling decision was taken in 2008, the opposition to it was indeed weak, as virtually the entire Gauteng public and businesses were unaware of the plan to launch the scheme or its impact on society, as a result of SANRAL's dismal public engagement process. As a result, only 28 comments were recorded from the formal public engagement notices when the decision was gazetted for comment. SANRAL's leadership avoided any substantial debate by only placing the regulatory notices once, in six newspapers, with some of these notices placed in the business section of these newspapers, i.e. as out of sight as possible.

It was only in 2010 when the erection of the gantries took place, that visible awareness evoked discussion in the public space about the intent to toll the recently widened freeway network. The public's ire erupted into the media and was evident at the few public engagement sessions on the tariff notices.

Aside from OUTA's opposition to the scheme, the GORT has been heavily opposed by COSATU, the SA Chamber of Commerce & Industry, Business Unity SA, the Southern African Catholic Bishops Conference, the SA Council of Churches, the Southern African Faith Communities Environment Institute, the Black Management Forum, the SA Local Government Association, the QuadPara Association of SA, and other organisations.

Every political party aside from the ANC opposed the scheme in Parliament and even within the governing party, strong opposition was evident. The ANC Youth League denounced e-tolling in 2011 and again in 2012³³. While the previous Premier of Gauteng (Ms Nomvula Mokonyane) supported the e-toll decision, Premier David Makhura is on record (18 February 2011³⁴) as voicing his concerns and strong criticism against the e-toll system since his election to office in 2014.

³³ See <http://www.ancyl.org.za/show.php?id=8235>,

³⁴ See <http://www.iol.co.za/news/south-africa/gauteng/toll-costs-reveal-two-faces-of-anc-1.1027432#.UwzIXuOSySo>,

3. Tangible comfort factors must be immediately felt to create confidence.

Users who pay for a decongested traffic experience need to experience satisfaction. If they don't, their complaint may or may not be heard by Call Centre staff, but it will nevertheless travel by word-of-mouth. Social media further accelerates the spread of bad news.

Not only is the comfort factor of reduced congestion absent in just a few years after the Gauteng freeway upgrade, but the fact that the motorists have insufficient alternatives both in routes or public transport options is a tangible issue. Additional issues of discomfort arise from a failure by SANRAL to reassure them of the security of personal information. In an article by Jon Tullet³⁵, a seasoned Information Management journalist writing for IT Web, reflected on three security breaches having occurred in the SANRAL e-toll website before and since e-tolling commenced.

The administrative process of participating in the e-toll scheme is also extremely cumbersome, more so if you chose not to give SANRAL your details (for personal and privacy reasons), or if you are not connected to the internet, or chose to pay by way of cash as opposed to credit card, or have to raise a dispute with regard to incorrect billing.

4. Alternative public transportation systems should be adequate and reliable.

This is not the case in Gauteng and the research shows that good public transport alternatives should exist for an ITS to work. In addition, in many successful instances of ITS systems, the revenues generated are substantially channelled toward further improvement of integrated public transport options. It would have been prudent in terms of dealing with Gauteng's congestion for the State and Province to have borrowed money to initially finance a sound integrated urban transport system to meet Gauteng commuter needs, where after the introduction of an ITS / e-toll system could have been contemplated – possibly even without widening the freeway routes - in order to encourage road users to make use of public transport options.

This matter is also pointed out in the Bew's Social Impact Assessment of e-tolls report³⁶, wherein he stated in the conclusion: *"The success of the second scenario, in which the system is upgraded and toll fees are charged, is largely dependent on a range of factors such as the availability of viable alternate routes and there being a reliable, safe and practical public transport system in place."*

³⁵ http://www.itweb.co.za/index.php?option=com_content&view=article&id=70981.

³⁶ http://www.socialassessment.co.za/gauteng_freeway_improvement_project.pdf

5. The pricing systems should be simple and the billing system user-friendly.

It is common knowledge that the GORT system has suffered from significant billing errors and that on a few occasions, even the former President Zuma and Minister Dipuo Peters scolded SANRAL on the billing error fiasco, in response to public outrage. Since the e-toll system was turned on in December 2013, OUTA has received a steady stream of complaints from vehicle owners and have tested these perceptions against random interviews to gauge the general understanding of the various elements of tariff calculations based on; vehicle classifications; time of day discounts; time of week discounts; high use additional discounts; discounts related to period of payment; user classifications (tagged, standard, alternate); payment methodologies etc.).

The pricing system is so complicated especially for “non-tagged” or “alternate users” that it has led to the suspicions that this was a deliberate ploy to manipulate users to sign SANRAL’s Terms and Conditions and buy an e-tag. One respondent (a highly respected human rights attorney) believes that the combination of a “very juicy carrot” (substantial discounts for tagged users) with the “very big stick” (a punitive tariff of 4.8 times the discounted tariff) during the initial years of the e-toll schemes existence was “idiotic” especially given the lack of widespread support. “People may have responded to the threat of penalties for late payment, but it would have had to be reasonable. The penalty tariff is so exorbitant many people will simply refuse to pay. SANRAL is creating the very scenario it is trying to avoid. Widespread civil disobedience.”

Discussions with people from poorer areas around Gauteng, appear to know very little about how the e-toll system and its pricing structures apply. It appears that vehicle owners residing in townships are generally not connected to the internet and do not live close to or shop where the SANRAL Customer Service Centres are located, making them less aware of how the e-toll scheme should be complied with. This raises questions of possible discriminatory practice and that SANRAL is risking further allegations of human rights infringements.

6. The soundness of the technology and data needs to be extremely reliable.

SANRAL CEO Nazir Alli at the time of its launch admitted that the database has “let us down”. This contradicts his repeated assurances when he was still the CEO of SANRAL, that the system was technologically sound and ready for business.

To this day, vehicle owners still receive invoices that carry the incorrect vehicle classification tariff, or are billed for movements that are not theirs.

Furthermore, in an inquest into a fatal accident on the N1 freeway in January 2014 involving Duduzane Zuma, the court found that SANRAL’s e-toll system evidence has proven to be unreliable after documents from SANRAL showed the two vehicles going through the gantries on the N1 highway at the wrong times. From a media report in

<https://www.pressreader.com/> an article titled “**Zuma Trial exposes glaring errors in e-toll system**”, it stated that the e-toll data showed that the one vehicle involved in the accident (Mr Vusi Dlamini’s taxi) was supposedly travelling under the Owl gantry 20 minutes after the accident, when the vehicle was stationary and not moved from the accident scene. Again, this vehicle was recorded as travelling under the Blouvalk gantry 40 minutes later. The e-toll data had also implied that Zuma’s vehicle had taken more than an hour to travel between two gantries (Blouvalk and Tarentaal) and indicated he was still driving at 10.34pm, more than 40 minutes after the accident.

This report along with the numerous e-toll billing errors reported to OUTA (and no doubt SANRAL), displays gross inaccuracies in the technology and data.

7. Environmental benefits and costs must be monitored and managed.

A major justification for the cost of ITS’s lies in the promise of not only reduced traffic congestion (because people move over to public transport options) but the consequent reduction in greenhouse gas emissions to combat global warming. A major complaint from users concerns the waste of paper and printing resources in printing invoices and statements for small amounts that bear no relation to the estimated cost of the printing. Many people even received invoices which displayed an amount owing as “R0.00”, a total waste of money.

8. A single agency with unquestioned legitimacy and authority should be responsible for implementation.

At the outset of the GFIP upgrade, SANRAL was indeed regarded as a strong and credible agency, and this is probably the only factor they had in their favour. However, once the e-toll funding mechanism came to light in the latter part of 2010, that strength subsided in both public perception and that of Ratings agencies, as SANRAL reeled from pillar to post in their dubious and misleading responses to numerous questions about the scheme.

Judging by the number of court cases that SANRAL has had to face, initiated by members of the public, civil society and city management entities (especially during the past few years), along with its desire to seek default judgments against e-toll defaulters, the level of frustration being expressed by a cross-section of society against this State-owned entity are extremely high.

7. INTERNATIONAL EXAMPLES & CASE STUDIES

There are cities with similar challenges to those in Gauteng, where progress has been achieved in overcoming urban traffic congestion from which South Africa can learn. At the turn of this century Enrique Peñalosa, former mayor of Bogotá, Colombia redefined a successful, developing and productive city based on the approach that “*developed urban environments are not those where the poor travel by car, but where the rich make use of public transport.*” He transformed a city with a reputation as one of the crime capitals of Latin America into a city which loves itself for what it could be, rather than hates itself for what it had become³⁷. He showed the humility to learn from the experience of other cities, notably Curitiba in Brazil.

When SANRAL set out to introduce the ambitious e-toll plan into South Africa, one would have expected significant research of international examples of successful and failed systems, as part of their risk management responsibilities. To date this has not been expressed in their communication.

Furthermore, it appears that while ITS implementations for congestion management in London, Stockholm and Singapore are shining examples of e-tolling success stories, the wisdom behind the successes of these have never been assimilated into SANRAL’s GORT plans. Case studies of failed, failing or troubled ITS initiatives provide still richer lessons, but it appears that SANRAL never applied their minds to these either. Edinburgh, Manchester, Hong Kong, Detroit, California, Australia, Texas, San Diego, Spain and more recently Portugal have all attempted to innovate and introduce ITS schemes to finance road construction. Some of these heeded the outcomes of their research and halted before they implemented the scheme (Edinburgh & Manchester), while others have failed or are in difficulty and falling far short of their targets.

The preliminary review by Klazar (nee Hommes) and Holmner of these experiences usefully pinpoint the advantages and the limitations of Intelligent Transport Systems. From this international experience, we have written above of what we consider to be the eight most critical success factors in planning and implementing an e-toll based ITS system.

Klazar (nee Hommes) and Holmner cite three examples of successful e-toll user pays ITS systems which raise doubt over the short to medium term success of Gauteng’s e-tolling system. The London Inner City Congestion Charge of 2003, (once referred to by Mr Nazir Alli as the success story on which the GORT-ITS is modelled); the Stockholm Congestion Charge system of 2011; and the Singapore road pricing scheme introduced to cut congestion and carbon emissions in 1975.

In summary, the following characteristics were very prevalent for the successful implementation of ITS / Toll systems:

- a. These cities had well-developed and reliable public transport systems before the “user

³⁷ <https://newurbanismfilmfestival.com/2016/07/25/bogota-brt-an-inspiration/>

- pays” system was introduced, which gave citizens cheaper and reliable alternatives, so as not to impose a financial constraint on their right to freedom of movement. This is not the case in Gauteng.
- b. The primary purpose of the ITS was to reduce congestion, i.e. to discourage road use during peak times. Charges were free outside peak and on weekends. This was not the case in SANRALs Gauteng system, where charges apply all the time, albeit at a slightly discounted tariff on weekends.
 - c. The revenues from the collection process were used to further improve public transport and other congestion easing, and not to upgrade existing motorways. This is not the case in Gauteng’s e-toll scheme.
 - d. Prior public engagement programs were exemplary, inclusionary and conducted extensively, to respect the international benchmark principle of prior free and informed consent insofar as the ITS implied any limitation of citizen rights. Because the citizens were very involved in the requirements, solutions, and even pricing of the system, the levels of public confidence were high. In Stockholm, a six-month trial period was adopted to give citizens real experience, after which a referendum to gauge the level of acceptance by society to proceed was held. Seventy % voted in favour, and the revenue flow financed improved public transport as well as the construction of a new bypass to further ease congestion. In SANRAL’s e-toll case, the public involvement and participative process was virtually non-existent and meaningless.
 - e. Strong, transparent and participatory leadership was exercised to gain public trust and support, resulting in high levels of compliance from the very outset. Once again, not so in the Gauteng e-toll matter.

Turning to the problematic instances Klazar (nee Hommes) and Holmner found that ITS innovations failed to gain the requisite momentum for success when restrictions were imposed by suddenly charging users for the use of roads when they had become accustomed to free passage. Threats to civil liberties and suspicions of a “stealth tax” left citizens distrustful.

Below we cite a number of examples where ITS innovations ran into trouble:

- **Greater Manchester** – 2008. Despite being based on the very same principles and technology that had succeeded in London, and despite having the same stated intent to use revenues for development and funding of improved public transport systems (bus rapid transport and rail), citizens nevertheless were sceptical. They rejected the system because of affordability and a weakened economy at the time. Stephen Glaister of the RAC Foundation (Transport Research Body for the UK) stated its failure was due to negative public perception *“on the basis of no compensating reductions in taxes or any other charges and a lack of confidence that anything would be different, or that the authorities could be trusted to do what they said they were going to do.”*³⁸.

³⁸ Report on Governing and Paying for England’s roads for the RAC Foundation by Stephen Glaister – July 2010

- **Edinburgh** – A Congestion Charge by way of e-tolls was proposed in 2002 to relieve inner-city congestion with the stated intent to use re-invested revenues to improve the public transport system. Notwithstanding, after intense political lobbying and public debate, 75% of citizens rejected the proposal. An investigation into the reasons for the rejection attests to the critical importance of avoiding unnecessary complexity. (Gaunt and Rye: 2005)³⁹
- In **Hong Kong** in the mid 80s, congestion charging using e-tags and CCTV was rejected twice, due mainly to pricing, economic climate and privacy issues, despite an initial pilot program and a massive Government communication campaign. The road users also objected to taxi's being exempted from paying the toll.
- **Portugal:** Launched in 2012, by Mid 2013 the SCUT (previously free roads) has shown "signs of failure" according to Estradas de Portugal (EP) roads chief António Ramalho⁴⁰. The report states that 19% of road users were not paying their tolls and 29% of the revenue was being channelled toward collection costs, with revenues falling well below initial study indications.
- **Australia:** According to Paul Grad and Peter Kenyon, Correspondent at Australia's, TunnelTalk discussion forum, on 16 July 2013 they stated that:
*"Australia has some of the finest highway tunnels in the world, but for the private investors who trusted traffic usage projections from leading and respected consultancy firms the story has been a tale of insolvency and disappointment. Most of the privately owned toll highway projects constructed in the last 15 years in Australia have fallen into receivership or administration within a short time of opening to traffic when it became clear that toll revenue from actual traffic usage would be well short of covering its contribution to the construction costs. Class action lawsuits are now being initiated by investors who believe they were misled by overly optimistic usage forecasts, and construction companies are becoming wary of bidding future concession projects. Not all toll tunnels in Australia have failed financially. Some have been highly successful. But for all cases of failure, the traffic forecasts were two or three times higher than the actual traffic usage when opened. This has led to the conclusion that there was something wrong with the procurement concept and the financial structure of the toll concessions."*⁴¹

A Public Private Partnership approach was adopted by the Brisbane State Government to seek private investment in a costly scheme to build a tunnel to enable motorists to get to the Brisbane International Airport more efficiently. It was assumed the users would pay. However, traffic volumes have proved woefully short of projected estimates, and the

³⁹ Allen S, Gaunt M, and Rye T. 2006. *An investigation into the reasons for the rejection of congestion charging by the citizens of Edinburgh*. [O]. Available at http://www.openstarts.units.it/dspace/bitstream/10077/5896/1/Allen_Gaunt_Rye_ET32.pdf,

⁴⁰ The Portugal News on Line. (2013) .*Dead Loss* Reported to journalist Brendan de Beer

⁴¹ Article in Tunnel Talk by Paul Grad – 16 Jul 2013 - <http://www.tunneltalk.com/Discussion-Forum-16Jul13-Australia-PPP-toll-tunnel-crisis.php>

private sector consortium is in financial trouble. The lesson to be learned from the Australian experience is that if the State has to bail out a failed PPP with tax revenues, it ends up with a greater injustice: non-users paying still more.

- **California:** In a paper written by D Arduin and W Winegarden⁴² in April 2013, the “Foothill/Eastern Transportation Corridor Agency (FETCA) these toll roads presently appear to be unsustainable and likely have been unworkable from their inception”. The roads are deeply in debt. The recent reviews “clearly raises significant concerns about the toll roads’ sustainability, the cost to taxpayers, and ability to relieve traffic congestion.”
- **Texas- The SH 130 Concession Company**⁴³: In 2007, the Texas Department of Transportation (TxDOT) entered into a Comprehensive Development Agreement, or public-private partnership, with SH 130 Concession Company, a subsidiary of Spain-based Cintra and Zachry Toll Road 56, which had ownership dispersed among Australian and many other foreign entities. The 41-mile southern stretch of SH 130 opened in November 2012, designed to be a bypass around congested downtown Austin. But the traffic never materialised and the private concession company sought bankruptcy protection in March 2016. Former Texas Transportation Commission Chairman Ric Williamson swore under oath before the Senate Transportation Committee on March 1, 2007, that if the private entities went bankrupt, the Texas taxpayers would get the road back free and clear of any debt. Free and clear means no debt obligations, and therefore no need to continue to charge tolls for usage. However, that didn’t happen. Instead, new owners were brought in, Strategic Value Partners, \$260 million in new debt was issued, and the new private company will continue to charge tolls until the contract is up in 2062 — for a road that now owes virtually no debt compared to its original \$1.4 billion.
- **San Diego - The South Bay Expressway**⁴⁴: When federal officials finalized a loan to a consortium building a toll road through open country in San Diego County near the Mexican border in 2003, they had high hopes for the project: the South Bay Expressway. Taking advantage of the Transportation Infrastructure Finance and Innovation Act, the investors behind the four-lane highway sought to prove that the private sector had a role to play in America’s transportation infrastructure. Eight years later, after \$635 million in construction costs, disappointing traffic revenue, the housing crash and bankruptcy, the South Bay Expressway is something less than a monument to “innovative” financing methods and private industry. Instead, the toll road, which emerged from Chapter 11 bankruptcy in April, was officially sold to the San Diego Association of Governments on Dec. 21. Macquarie, the Australian infrastructure investment company, simply wrote the road off as a loss.

⁴² Arduin, D and Winegarder W. (2013) *Orange County Toll Roads: Serious Concerns Should Lead to Significant Review by State and Local Officials*. Pacific Research Institute.

⁴³ <https://austincountynewsonline.com/texans-angered-sh-130-bankruptcy-deal-wipes-money-owed-taxpayers/>

⁴⁴ https://www.huffpost.com/entry/transportation-department-south-bay-expressway_n_1171842

- **Spanish Government Scraps Toll Road Charges:**⁴⁵ Nine motorways in Spain that were financed under tolling concessions were filing for bankruptcy in 2014 and the Spanish Government were working on plans to create a State-owned holding company to manage the motorways with the minimum impact on State coffers and without it constituting State aid. By 2018, the Spanish Government had decided to scrap tolling of many of these routes as their toll contract period expired in 2019 and 2020, and to bring the asset back into the state's hands and finance these through reallocation of budget from other areas of Government tax finances.
- **Northern Indiana - Foley Beach Express gateway toll bridge**⁴⁶: The operator of the Indiana Toll Road, ITR Concession Co., declared bankruptcy on more than \$6 billion in debt in September 2014 and under it plans to file for reorganizational bankruptcy, it achieved new ownership.

In all the examples of ITS failures, the following factors were prevalent:

- Lack of acceptance/approval by the public leading to lower than required compliance.
- Projected revenues were not met – initial revenue targets and calculations of compliance and/or usage was too high and not achieved.
- Public distrust and concern about invasion of privacy.
- High proportionate collection cost.

In an article written by **Stephanie Kane**⁴⁷ for the Hartford Courant in the USA on 7 August 2018, gives credence to mounting concerns with regard to the effectiveness of tolling as a viable mechanism to collect revenue for infrastructure purposes. An extract from her article reflects thus:

“The issue with tolling studies is that they take time to be proven wrong. Years after tolls are implemented, when projected toll revenues fail to arrive, there is no accountability for the consultants whose analysis helped get the tolls built. Tolling studies’ rose-coloured conclusions mislead policymakers into thinking tolls are a practical funding solution when, in fact, they are not. Whether tolls bring in money is not in doubt. The question is what is the best way to raise needed infrastructure repair dollars? Any person who answers “tolls” to that question is severely uninformed about the many negative aspects of tolls. The U.S. Congressional Research Service estimates administrative costs use 8 to 11 percent of electronic collections from tolls⁴⁸,

⁴⁵ <https://www.4everspain.com/en/daily-news/spains-government-to-scrap-toll-road-fees-on-routes-across-the-country/>

⁴⁶ https://www.nwitimes.com/business/transportation/when-good-toll-roads-go-bad/article_cfb056e1-87af-561a-934a-a67b900d9962.html

⁴⁷ <https://www.courant.com/opinion/op-ed/hc-op-tolls-waste-of-taxpayer-money-time-20180806-story.html>

⁴⁸ Paper by Robert S Kirk: Tolling U.S. Highways <https://fas.org/sgp/crs/misc/R43575.pdf>

whereas the fuel tax has a less than 1 percent administration fee. Connecticut taxpayers should want 100 percent of revenue, or as close to it as possible, to go toward road and bridge improvements instead of subsidizing a new bureaucracy."

Adding weight to the issue of failed toll schemes is the following extract from an article⁴⁹ dated 10 September 2013, wherein the **Fitch Ratings Agency** explains:

"Public private partnerships can provide public value, but need to be carefully crafted to address all stakeholder concerns. When public private partnerships are viewed to have failed, the issue is often inappropriate transaction design and application." They indicate "a number of failed projects around the world that suffered from overleveraged assets".

8. GOVERNMENT IN A CRISIS OF LEGITIMACY OVER E-TOLLS

In a constitutional democracy, the all-important ingredient of *public acceptance* must, embody the meaningful pro-active commitment to human rights by political representatives and senior officials. When people in authority (the governors) want the rest of society (the governed) to behave, it matters first and foremost how they themselves behave.

It is a matter of the adherence by the State (and any State-owned enterprise such as SANRAL) to what sociologists and criminologists term the **Principle of Legitimacy**. In essence, this means that the legitimacy of any authority derives from three interrelated warrants:

1. The extent to which people subject to that authority are listened to and respected;
2. A reasonable consistency over time in the laws imposed by the authority;
3. The fair and impartial application of the laws without fear, favour and prejudice. (Discrimination between people may only legitimately occur if it is manifestly in the interests of the most vulnerable people of society.)

International evidence (and common sense) indicates that for an e-tolling system to work best, *all* users must pay or at the very least, the vast majority and those not paying must be pursued for non-payment. If however, the users do not buy into an e-toll user-pays system (for whatever reason), and if the State lacks either the legitimacy or the practical capacity to impose sanctions that encourage (not threaten) compliance, the system will be neither financially sustainable nor systemically viable.

In the case of the Gauteng e-tolling system, the Criminal Justice system would never be able to cope with even 10% (around 250,000) of road-users defaulting, let alone the current levels of 75% to 80% (or some 1,5 million regular users). In our view, when looking into the international toll systems that fail, even at 80% levels of compliance, those users paying become irate with the fact that the other 20% are not paying and are unable to be enforced /

⁴⁹ Newspaper.com, The. (2013). *Credit Rating Firm Catalogues Toll Road Woes*. [O]. Available at: <http://www.thenewspaper.com/news/42/4228.asp>

prosecuted. This causes the system's compliance levels to spiral downward, slowly at first, but gradually the problem worsens, and the collection process quickly becomes too difficult and costly to manage.

When the projected output of the system falls far short of meeting the contractual obligations SANRAL has set for the Electronic Tolling Company (as is the case in Gauteng), the financial subsystem will in turn, be under strain and the ramifications for SANRAL (and ultimately society) will be immense when they fail to meet the administration and the interest costs, let alone the capital repayment of the loan.

In the OUTA vs SANRAL court papers of 2012, SANRAL mentioned their initial expectations to achieve 93% compliance level, which today can be construed as grossly out of touch with reality. It is clear to OUTA that the executive leadership of SANRAL refused to be pragmatic about the situation that was unfolding in the lead up to the launch, as well as during the first year of operation. Instead, they chose not to be transparent about the exact details of the e-tag penetration rate achieved and it became evident they were terrified of facing the awkward truth that public acceptance fell far short of viability in the medium to long term.

Most critically for any system to be viable, the purpose of the system must withstand scrutiny in terms of **ethical legitimacy**. Unfortunately for SANRAL, the e-toll system finds itself on an even steeper hill, amidst a broader Government legitimacy crisis because of persistent questions about Nkandla, the Spy Tapes, Marikana, State Capture and the Auditor General's report on wasted taxes and corruption. Combined with the construction collusion and the apparent exorbitant GFIP construction costs, the resistance to the scheme gained momentum from the outset as large numbers of society begin to openly boycott the system in an irate display of defiance against Government and SANRAL, for failing to take the users of the system into their confidence.

While the crescendo of public rejection of e-tolls has been encouraging to concerned critics, the real issue is that Gauteng desperately needed solutions, including an efficient integrated public transport network, to alleviate traffic congestion, reduce carbon emissions and generate a productive and efficient environment to get people and goods to and from their daily destinations, thereby promoting a long term solution for this region's transport problems.

With the many controversies and concerns surrounding e-tolls in mind as listed in this paper, one can accept that society has plausible and legitimate grounds for their rejection of the e-toll scheme. SANRAL's views cannot be "solved" by economic modelling and engineering and neither can it be "absolved" by excusing whatever wrong-doing may have occurred. Integral to finding a solution to the current impasse, will be the genuine display of a good quality of leadership that acknowledges the significant errors and assumptions made.

While legal adversarialism comes into its own in matters of determining guilt or innocence of a person accused of a crime, it is less helpful in determining whether a decision by an organ of state in the executive arm of government was indeed good, bad or indifferent. The judiciary has in the "lawfare" phase awarded SANRAL only one sound legal judgement by affirming the separation of powers and affirmed the right of the executive to execute its own policy

decisions and to take whatever consequences flowed. Policies are made and unmade in the Legislative Arm of Government.

The real challenge for Government however is not on what the executive says should transpire, but in what actually does transpire on the ground, practically when it comes to implementation of policy. If indeed they are unable to administer and enforce legislated policy which is largely resisted by the people, they begin to suffer a crisis of legitimacy. This has been the case on the e-toll saga from day one.

9. THE WAY FORWARD

OUTA has on several occasions raised its concern about statements made by various ministers that the “user-pays” principle is the basis on which the e-toll scheme will continue to be justified and remain in place. This is tantamount to a command and control approach which seeks to force people to submit to a scheme has failed and which for many valid reasons, they have rejected. In today’s democratic environment, Government ought to know better than to force people to submit, when it is obvious that co-operation, rather than submission, is the most effective way to govern and seek a solution to the e-toll impasse.

The fact that the enthusiasm levels of the Gauteng Freeway users are so low means that it cannot be sustained without considerable application of negative sanctions by the authorities, which has been substantively reduced by the announcement⁵⁰ on 20 March 2019 by the Credit Bureau Association, who have said that e-toll judgements will not be reflected on the public’s credit profiles.

A legal “test case” hurdle

This means that the first hurdle that SANRAL needs to navigate in order to proceed with debt collection, is to obtain a successful civil claim in the legal test case against OUTA’s supporters. The chances of Government succeeding here is not guaranteed by a long way, despite the earlier court rulings in 2012/13. Much of the reasons pertaining to the unlawfulness of the Gauteng e-toll matter, are reflected in the court challenge of City of Cape Town vs SANRAL on their urban road toll plans, wherein SANRAL lost in all three courts (High Court, SCA and the Con Court), with scathing judgments against the SANRAL executive and the Minister of Transport.

A final barrier – Citizens vs “Police State” litigious war.

And even if the test case scenario by chance rules in SANRAL’s favour, they will need to then file to for a default judgment and secure / attach the property of the citizens and businesses that “owe” money for unpaid e-tolls. While in theory this may be possible, in

⁵⁰ <https://www.timeslive.co.za/motoring/news/2019-03-22-no-blacklisting-for-e-toll-judgments/>

practise this action would be extremely expensive and will most certainly be deemed as a serious lack of moral sanction and unethical conduct by the State. It would be tantamount to declaring economic war against the people and will force the bankruptcy of many a family and business, placing people out of employment and into bankruptcy. In short, if this last resort attempt was ever allowed to transpire, South Africa would be regarded as returning to the depths of being a police state.

The empirical evidence and the conceptual analysis conducted by OUTA and others has provided a clear message that the Gauteng e-toll system was in trouble before it started and remains in a far worse situation today and continues to get worse by the day.

We do not believe that Gauteng's e-toll scheme will ever manage to achieve the required levels for success to fund the GFIP bonds, nor will any "carrot-style" plans to offer the write-off of the current debt be sufficient to entice citizens to comply with e-tolls going forward. It's not about the tariffs, it's about the principle, unworkability, high and questionable costs of e-toll administration and the odious debt of the overpriced freeway construction.

OUTA'S PROPOSALS.

1. Revoke the regulations declaring the GFIP as toll routes, on the basis of a formal acknowledgement that the current scheme has been unable to service the GFIP debt.
2. That SANRAL and Treasury meet with the bondholders (PIC) to renegotiate the terms and period of settlement.
3. That Treasury considers the following options:
 - 3.1 **Government grant funding** to offset the renegotiated GFIP Bonds. Table 4 below indicates that if the bond amounted to R21.5bn, then Treasury would need to allocate R2.68bn to SANRAL per annum for 20 years. If the current amount due is R47.6bn (including interest accrued), then R5.9bn will need to be allocated to SANRAL per annum to settle this debt in 20 years.
 - 3.2 **Fuel Levy Allocations** to offset the renegotiated GFIP Bonds. Table 4 below shows that if only the Fuel Levy is used to settle the bonds, then R0.11c per litre of fuel will be required to cover an amount of R21.5bn or R0.26c per litre will be required to settle R47.6bn (being the GFIP Bond plus all interest accrued) over the next 20 years.
 - 3.3 **Hybrid of Government Grants and Fuel Levy**: Government may also choose to partially use Government Grants and partially the Fuel Levy to cover the amounts due.
 - 3.4 **Inland Fuel Levy**: OUTA does not support a Provincial Fuel Levy be applied to Gauteng only, as Provincial Fuel Levies work against the national taxation structures that accrue to the overall needs of the nation, be it national roads, health, education etc. The closest one might justify the weighting of a fuel levy allocation toward Gauteng motorists to finance the GFIP, is to introduce an

“Inland Fuel Levy” applied much in the same way as the “pipeline levy” to fuel dispensed from all fuel stations located inland. This could be done through a “zonal gradual increments” basis, so as not to have vast disparities of fuel prices across provincial or municipal boundaries. This way the “Inland Fuel Levy” increases the fuel prices gradually, the closer one moves toward Gauteng. Government has ring-fenced levies on fuel in the past, which suggests there is a reason to believe this option can be applied in this instance. A mix to combine the National Fuel Levy (e.g. at R0.05c per litre) and the “Inland Fuel Levy” (e.g. at R0.07c per litre), may provide an equitable solution to raise around R2.6bn per annum and the balance of the amount due could be offset from Treasury.

TABLE 4

ANNUAL FUNDS REQUIRED FROM TREASURY (20 year period)

	OUTAs Est of GFIP	ACTUAL GFIP	GFIP + E-TOLLS	OPTION OF RENEGOTIATED BOND
BOND AMOUNT (x R1m):	10,000	18,000	21,500	47,632
Amortised per annum at 7%:	250	440	530	1,150
Interest on Capital at 10%:	1,000	1,800	2,150	4,763
Annual Financing Costs from Treasury:	1,250	2,240	2,680	5,913

If the Treasury pot is empty, then consider fuel levy

Ave Litres Sold: 23,000 (x Mil)

Increase in Fuel Levy to cover 100% bond	0.05	0.10	0.11	0.26

These figures are backed by Econometrix, Impact Investment and Bernal Floor

4. **Road funding Committee and Transport Regulator:** OUTA proposes that Government establish Road Funding Committee (SANRAL, Civil Society, CIDB & Treasury) to address appointment of an independent Transport Regulator and to set the terms and roles of this office, which should include oversight on Tolling contract, Toll Tariffs, road infrastructure project procurement etc.

5. **Current Gantry Infrastructure Use:**

Until other uses are found for the e-toll gantries, these could be put to good use in the following manner:

- a) Traffic volume monitoring and redirection.
- b) Communication to motorists of traffic alerts & congestion.
- c) Average seep over distance monitoring and law enforcement.
- d) Surveillance and policing of cloned / false number plates and poor road behaviour.
- e) Stolen vehicle tracking and policing.

6. **Future ITS / E-toll possibilities for Gauteng:** OUTA further suggests that we should not eliminate the view that if indeed at some stage in the future when good public transport alternatives are in place, and ITS systems are efficiently installed, tolling system may be tested as a possibility to finance more public transport systems, but only after a thorough public engagement and approval process has been conducted to obtain societies acceptance of this mechanism as a congestion easing and public transport financing model, the likes of which was successful in Stockholm.

However, to do so would require that the Government will settle the entire current debt of the GFIP Bonds, and a fresh start with substantive public engagements begin to seek societies acceptance and support for an ITS mechanism to contribute to congestion easing in the Province. To do so, the following shortcomings of the current system will need to be addressed:

- Clarity on what e-tolls will be funding, wider roads (advise not) or safe reliable integrated public transport infrastructure expansion (a better choice)?
 - Transparency and public inclusion into proposed e-toll tariffs.
 - Details on transparency of the operations / administration tender process.
 - Explanations on the costs of administration in relation to the income sought and how do these compare to international standards.
 - How will administrative inefficiencies experienced by the current system, such as reliance on eNatis be overcome?
 - How will they system cater for the non-internet connected population?
 - Will the public be able to receive their posted invoices in time to benefit from discounted tariffs?
 - The rationale and justification of zero rates applied to taxi-industry?
 - Will an efficient and acceptable dispute resolution mechanism be in place and will all queried charges be placed on hold until resolved, negating the allocation of payments to oldest bills?
 - Will it be a congestion management scheme (i.e. no charges after hours and weekends), or is it a finance generation scheme?
7. **GFIP Construction Investigation:** The issue of the grossly overpriced construction of GFIP should not be left unchecked. OUTA's research, reflected in its position paper⁵¹ that the cost of construction of GFIP at R17.9bn for the widening of 187km of existing freeways by one lane in each direction, including the work on interchanges, extra bridges, flyovers and lighting, ought not to have cost more than R10bn, and probably less if prudent and hard approach to pricing had have taken place. This issue cannot be ignored or swept under the carpet in the manner that has transpired

⁵¹ <https://www.oua.co.za/projects/transport/freeway-construction-costs>

to date as the gross overpricing of the GFIP has a direct impact on the decision to toll. Accordingly, OUTA has repeatedly called on the authorities to introduce an independent commission of enquiry on the GFIP Construction costs.

10. CONCLUSION

It is never too late to halt the journey down a dangerous path and embark along a safer and more prosperous route that garners the support of one's people. Persisting with “user-pays” as the principle that guides the e-toll decision is a fallacy and to pursue the current e-toll scheme will not realise the revenues required and will forever drive a wedge between the Government and its people.

There are simply too many factors loaded against SANRAL and the governing authorities on the current e-toll system, a matter which is borne out in the numerous examples on the international stage that show we are not alone in this situation. These examples also show how government have been able to change their minds and reverse these decisions. Without doubt, the magnitude of the failure of Gauteng’s e-toll scheme is extremely big and it will not be able to be rectified with a carrot-and-stick approach, nor will a lengthily and costly litigation “war against society” suffice.

Every day we delay on reversing the decision and finding alternative solutions, adds more cost to Government and society.

Government should treat this matter as a good learning experience, knowing that for decades to come the Gauteng / SANRAL e-toll failure is a subject that already has and will continue to feature in schools and university studies to exemplify how a Government’s legitimacy becomes challenged when they fail to apply the basic principles of good research, meaningful public engagement, transparency and acting in the best interests of society. As a result, Gauteng was robbed of a wonderful opportunity to have explored the introduction of a world-class ITS system, which may have replaced the wider freeway network with a much needed and vastly improved integrated public transport system, or a combined variation / hybrid outcome thereof.

Whatever the possibilities that may transpire, this is the time for Government to write the ending of this chapter, on how learning was achieved and how a sound decision based on the best interests of the people was able to give rise to a lasting and sustainable solution. A solution with the people - for the people.

In publishing this updated assessment, OUTA trusts that the authorities give recognition to the complexity of the many issues related to this matter and we hope the necessary leadership will be exercised to lead Gauteng and South Africa out of this most unfortunate and unnecessary impasse.

Wayne Duvenage

OUTA CEO

11. GLOSSARY & ABBREVIATIONS

AARTO:	Administrative Adjudication of Road Traffic Offences Act
ANC:	African National Congress
APNR:	Automatic Number Plate Recognition
BBBEE:	Broad-Based Black Economic Empowerment
BOT:	Build, Operate and Transfer
COSATU:	Congress of South African Trade Unions
CPA:	Criminal Procedure Act
DG:	Deputy General
DoT:	Department of Transport
E-TAG:	Electronic Transponder
E-TOLL:	Electronic Tolling
eNaTIS:	National Traffic Information System
ETC-JV:	Electronic Toll Collection – Joint Venture company
ETC:	Electronic Toll Collection
GDP:	Gross Domestic Product
GFIP:	Gauteng Freeway Improvement Project
GORT:	Gauteng Open Road Tolling
IMC:	Inter-Ministerial Committee
ITS:	Intelligent Transport System
N3TC:	N3 Toll Concession
OECD:	The Organisation for Economic Co-Operation and Development
OUTA:	Organisation Undoing Tax Abuse (2012-2016: Opposition to Urban Tolling Alliance)
QASA:	The QuadPara Association of South Africa
RFA:	Road Freight Association
RIA:	Regulatory Impact Assessment
RMI:	Retail Motor Industry
SAA:	South African Airways
SANCU:	South African National Consumer Union
SANRAL:	South African National Road Agencies Limited
SAPO:	South African Post Office
SATSA:	Southern Africa Tourism Services Association
SAVRALA:	South African Vehicle Rental and Leasing Association
SCA:	Supreme Court of Appeal
SOE:	State Owned Entity
TRAC:	Trans African Concessions
VRP:	Voluntary Rebuild Program

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ANNEXURE A

Extract of fees from SANRAL contract with ETC-JV

Below is an extract of the Actual contract between SANRAL and the Electronic Toll Collection JV company, signed in September 2011.

The tender was for a five year period.

Note the amount pertaining to Series B, which is the main element of the tender, being the cost that ETC would earn to cover the toll collection operations and administration of the Toll collection system.

SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED
CONTRACT NRA N.001-201-2008/1
FOR THE
PROCUREMENT OF AN OPEN ROAD TOLLING SYSTEM IN THE GAUTENG PROVINCE, SOUTH AFRICA
AND A NATIONAL TRANSACTION CLEARING HOUSE

TOTAL FOR WORKS: DESIGN-BUILD, OPERATION SERVICE AND ASSET REPLACEMENT SCHEDULE

SERIES	WORK SECTION	AMOUNT
A	TENDERED AMOUNT FOR DESIGN-BUILD, CARRIED FORWARD TO VOLUME 3 PART T2 FORM A5: LETTER OF TENDER (INCLUDING VAT)	1,330,173,559.34
B	TENDERED AMOUNT FOR OPERATION SERVICE, CARRIED FORWARD TO VOLUME 3 PART T2 FORM A5 : LETTER OF TENDER (INCLUDING VAT)	8,204,282,205.33
C	TENDERED AMOUNT FOR ASSET REPLACEMENT SCHEDULE, CARRIED FORWARD TO VOLUME 3 PART T2 FORM A5 : LETTER OF TENDER (INCLUDING VAT)	371,203,950.00
	TENDERED AMOUNT FOR WORKS (VAT INCLUDED) CARRIED FORWARD TO VOLUME 3 PART T2 FORM A5 : LETTER OF TENDER	9,905,659,714.68

Notes to Tenderer:

- 1 Each page of the Schedule of Payment must be signed by the Tenderer.

ANNEXURE B

Extract of SANRAL Presentation on e-toll System Tender Values

Below is an extract of Slide # 218 of SANRAL's presentation to Premier Makhura's Gauteng e-toll Socio-Economic Impact Assessment Panel: Nov 2014.

The ETC-JV tender was successful.

Note the amount of R4.73 in line B , which pertains to the value paid to the tenderer for 5-years to operate and administer the e-toll collection Process.

Note how this differs substantially from the amount of R8.2bn in the actual signed contract with ETC (as shown in Annexure A).

TOLL SYSTEM

218

- Contractor compensated for services rendered
- Payments made according to applicable payment band
- Tenders received:

R' Billion (Rounded)	ETC JV	Areya Alternative	Hamba Goli	Areya
A. Toll System Design-Build	R1,16	R 1,43	R 1,61	R 2,46
B. Operation Service	R4,73	R 7,36	R 7,04	R12,83
C. Asset Replacement	R0,33	R -	R 0,37	R -
TOTAL	R 6,22	R8,79	R9,02	R 15,29

ANNEXURE C

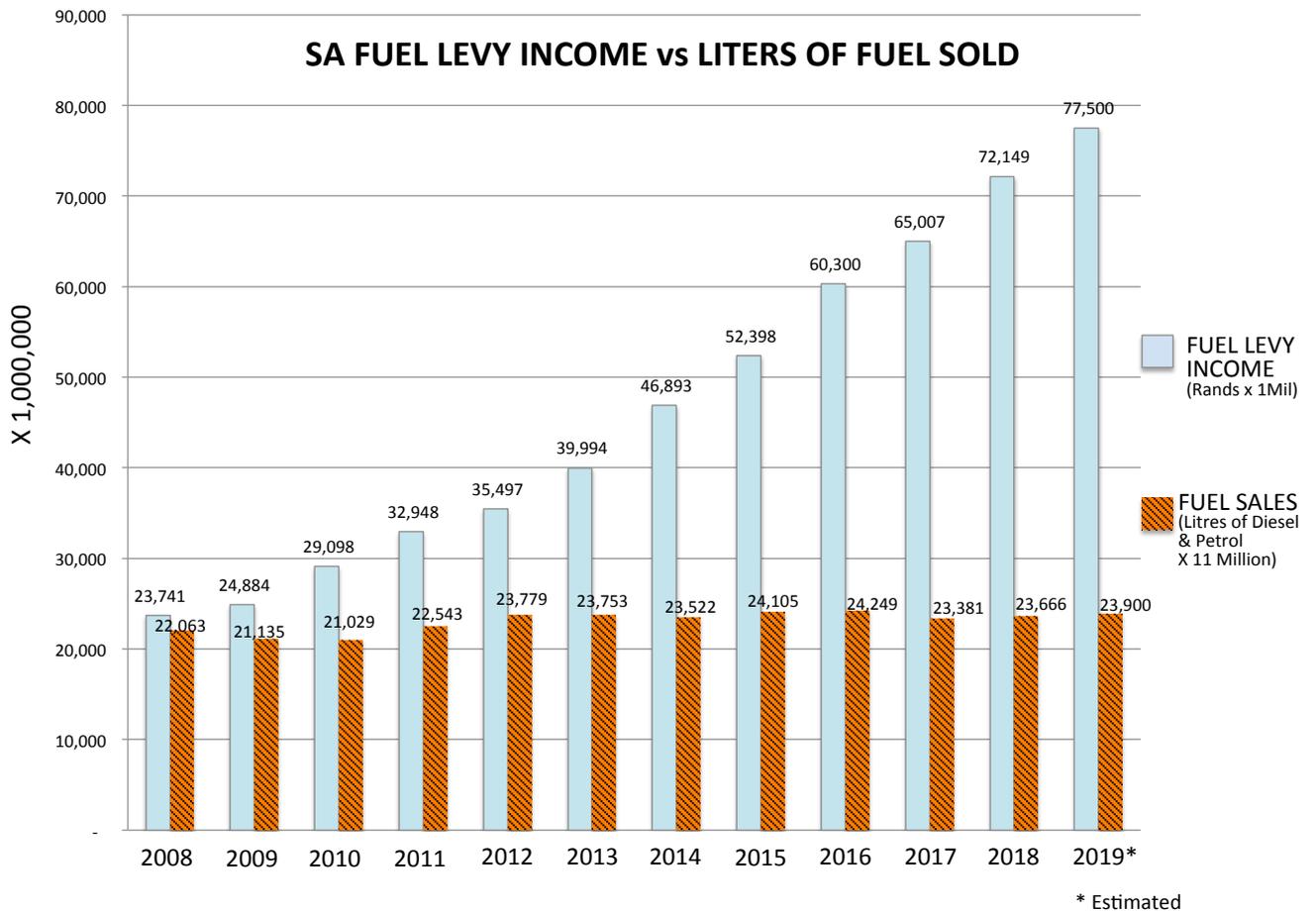
Major categories of E-toll billing complaints from the public:

1. Vehicle owners have not lived in Gauteng or traveled on the e-toll routes yet they receive SMS messages to pay up their e-toll account with an amount reflected in the SMS.
2. Vehicle owners have never received invoices from SANRAL, yet are receiving threatening SMS messages to pay their e-toll account.
3. Receipt of invoices for vehicles that are not registered in the recipient's name, or any family members name and the vehicles are unknown to them.
4. Vehicle owners have been deceased for a lengthily period and despite family members sending proof thereof (death certificate), SANRAL say they are taking legal action against the deceased.
5. Vehicle owners receiving SMS messages of outstanding amounts, despite that the tag has constantly been paid up since the launch of the scheme and despite visiting and checking and confirming with the e-toll customer center that the e-tag and vehicle registered in the users name was paid up.
6. Receipt of bills that belonged to the vehicle's previous owner, despite furnishing details to ETC of date of purchase of the vehicle by new owner.
7. Receipt of bills for owned vehicle which has never been on the e-toll freeway.
8. Receipt of bills for another registration number on the photo, when clearly the owners vehicle registration on the car in the photo was not the one reflected in the invoice.
9. Receipt of e-toll bills for incorrect category of vehicle.
10. Receipts of bills for caravan, trailers etc that are exempt from e-tolls.

ANNEXURE D

FUEL LEVY REVENUE & FUEL SALES VOLUMES

- In 2008, when the e-toll decision was signed, to finance the GFIP bonds, the Fuel Levy attributed R23.7bn to Treasury from 22.6bn liters of fuel (petrol and diesel) per annum.
- While the volumes of fuel sales have not increased much over the past decade, the Fuel Levy value has been substantively increased substantially, to the extent that by 2019, the levy generates around R77bn to Treasury, three times more than it did a decade ago.
- A 10c increase to the fuel levy would have provided the necessary funds (R2.3bn per annum) to settle the bonds, with minimal impact on the overall levy to the consumer.



ANNEXURE E

Department of Transport Memo to Cabinet – Gauteng’s Economic Value to SA.

July 2007

"NA7"

1411

SECRET

DEPARTMENT OF TRANSPORT

CABINET MEMORANDUM NO OF 2007

DATE:

FILE NUMBER:

1. SUBJECT

Gauteng Freeway Improvement Scheme Proposal

2. PURPOSE

2.1 The purpose of this memorandum is:

2.1.1 To present the proposed Gauteng Freeway Improvement Scheme to Cabinet, including the findings of the feasibility study, the macro-economic impact study and the social impact study; and

2.1.2 To request Cabinet approval for its implementation

3. SUMMARY

3.1 The state of the freeway system in Gauteng is a concern not only for Gauteng, but for South Africa as a whole. Contributing 38% of the country's Gross Domestic Product (GDP), Gauteng is the economic hub of South Africa. The condition of freeways has been gradually deteriorating over the years due to reasons including high exposure to heavy vehicle traffic, pavement age, no freeway expansions and limited resources. In addition expanding economic activities and urban attraction have resulted in traffic volumes on average increasing at 5% since 1991. The amount of vehicles on the roads has thus increased tremendously leading to congestion problems. Accident risk is also much higher on these roads.

1

SECRET

CS

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