

OUTA

ORGANISATION UNDOING TAX ABUSE



ANNUAL REPORT
2016/17

WHAT IT MEANS TO BE AN OUTA MEMBER:



LOOSENING THE GRIP OF UNJUST TAXATION

As a contributing member of OUTA, your support helps fight corruption, tax abuse and irrational tax policies set out by Government and their State Owned Entities (SOE's).



EXPOSE, INVESTIGATE, LITIGATE

By becoming a member or a Donor of OUTA, **you become an active citizen**, part of the movement that conducts research, investigations, communication and litigation when and where the board believes it is necessary to do so.



HONOUR BASED

We function on an honour-based system whereby financial contributions to the cause are made solely at the discretion of each member and to the value they believe they can afford ie. **the donation value is theirs to decide.**

Each membership is kept confidential.



IN THE KNOW/LOOP

Members will receive interesting news and articles from the organisation. Members will also be invited to participate in decisions, gazette inputs and other aspects pertinent to being an active citizen.

ANNUAL REPORT 2016/17

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Tax Revolts and Protests

OUTA'S VISION:

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

OUTA'S MISSION:

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

- Challenging the taxation policy and the regulatory environment (as a whole or part), as and when deemed as being irrational, unfit or ineffective for their intended purpose.
- Questioning and challenging the squandering, maladministration and corrupt use of taxes, using our clear and effective methodology, and then to hold those responsible for the maladministration and/or corruption, to account for their behaviour and actions.

OUTA





1 INTRODUCTION

WAITING FOR A NEW 'MORALLY INSPIRED TACKLE'

"Where to from here, I have no clue. One thing for sure is that you cannot fight against evil if your own soul is littered with same. Our land redress, radical economic transformation and united non-racial and non-sexist battles are just and fair. However, we are standing on an immoral platform from which we launch our attacks on oppressive systems. As a result we are depleted and ultimately we'll be defeated as our goals wait for a new morally inspired tackle."

Dr Makhosi Khoza, ANC Member of Parliament

The Organisation Undoing Tax Abuse (OUTA) exists to inspire people with hope for the future by, holding government accountable to ensure tax money is not misspent on corrupt practices by any organ of State.

Put another way, OUTA exists for all those who want to do something about tackling the issues we have, because it's not coming from within the ruling party. It cannot come from any particular political party either because it requires an organisation that is not politically aligned to any party, but which is nevertheless politically committed – committed to ensuring that those who wield power do so with due authority and legitimacy and in accordance with the constitution of the Republic of South Africa.

We are mindful that our supporters are obliged to pay tax in numerous forms, but are not obliged to sit back and watch the corrupt use of their tax Rands, by those in authority who have lost legitimacy, precisely because of their abuse of power.

Two years ago, when OUTA consisted of only five people, 'Nkandla' and 'e-tolls' were the headline-making issues. There was concern about the Presidents interference in strategic crony appointments and stories of corruption, but we were not yet aware that South Africa was in fact trembling on the edge of the abyss of falling into a 'State of Capture' – the topic revealed in the Public Protector's report in 2016 and now on the lips of many people. The extent of the corruption within the ruling party has confirmed that it is simply incapable of self-correction.

The South African Council of Churches has warned that we are "within inches of becoming a Mafia state", and are joined by concerned academics warning of a "silent coup".

The absurdity of it all is that at the apex of the political pyramid of corruption, sits a President who so far has managed to avoid criminal conviction through the courts and retains sufficient political support from within the party that elected him. He has hitherto carved his survival strategy to leave him in the grey zone of "plausible deniability" – to be able to deny knowledge of or responsibility for the damning actions committed by others because of a lack of evidence that can confirm his participation.



The Daily Vox



Or so he thinks.

The denials have become progressively more implausible, and the subordinates in the chain of command increasingly uncomfortable, as the tentacles of corruption stifle the life out of them. Own goals are being scored. As Sir Walter Scott observed poetically, "O what a tangled web we weave when first we practice to deceive".

Once power starts to collapse in on itself, the only option to keep subordinates in line is to keep upping the ante of fear. But fear is unsustainable, because resources for patronage start running dry. The plundering of state-owned entities to keep the systematically corrupt state afloat cannot continue. Well, it can, but only if the input of cash from tax payers and consumers of state provided utilities (electricity, water, roads) pay up, which they are increasingly refusing to do. And the state's ability to act is diminishing.

Of concern is the growing erosion of the rule of law. This is not a good space for any country to venture into. It happens when government slumps into a crisis of legitimacy and the forces of democracy and free speech give strength to a rise in civil activism, to remind those in power that democratic freedom is not a license for self-indulgence. The tackles that are to be made must be 'moral tackles' – a call to a higher standard – if the country is not to become crippled.

Breaking news is that South Africa has now, for the second time in the past eight years, reported a negative growth rate over two consecutive quarters. The last time was back in 2008, but that was due the global financial meltdown which affected even the most robust economies. This time, we have only ourselves to blame. The adage that says, "people get the government that they deserve", is only true in the absence of democratic freedom that empower ordinary citizens with recourse.

We have those in South Africa. And we do not deserve Jacob Zuma and everything he and his faction represents. South Africa has great constitution, which provides civil society with the space and the means to hold government accountable and to deliver.

This is why OUTA exists.

In this report, we show what civil intervention means and looks like in practice. Our team, which has swelled to close on 40 people, are working tirelessly to execute the OUTA mandate we have been given by the tens of millions of people who support us every month. Small or large, our contribution is what makes our work possible, and so rewarding. At OUTA we like to call it 'crowd funding for South Africa's prosperity'.



2 CHAIRMAN'S REPORT

It was five years ago, in March 2012, that OUTA launched itself into the civil activism arena with a challenge to halt the introduction of Gauteng's e-toll scheme. While the e-toll matter certainly dominated our activities for the first three to four years, and remains one of OUTA's primary projects, the past 18 months have seen OUTA grow tremendously, primarily as a result of our decision to embrace a broader mandate: to tackle the abuse of authority within the public sector, on many fronts.

OUTA's name change in February 2016, from the Opposition to Urban Tolling Alliance, to the Organisation Undoing Tax Abuse, speaks exactly to what we do. Hence we have retained our well-known brand acronym, on an exciting journey of growth and organisation-building that has unleashed a new energy of activism from our offices in Ferndale, Randburg.

The 'new' OUTA was born on the back of our success in challenging the e-toll saga, giving rise to many a request from the public to broaden our mandate. With a growing team of activist-minded team members, focused on project management, backed by a strong social media and journalism approach, OUTA's sustainable growth is made possible through an effective communication strategy that generates wide-scale support from the public.

Building capacity remains central to OUTA's ability to be effective in our work. Our revised structure is made up of a core project management team of Portfolio Managers / Directors in the areas of Energy, Transport, Water and Special Projects. They are supported by four specialist teams that focus on case building / litigation, investigation, research and communication.



ORGANISATIONAL ENERGY IS ONLY DRIVEN BY PEOPLE. ITS LEVEL AND INTENSITY IS DIRECTLY IMPACTED BY THE PASSION AND STRENGTH OF TALENT THEREIN.

Wayne Duvenage

Today, as you will see in the various project overviews reflected in this year's annual review, OUTA has been exposing, challenging, halting and holding to account many individuals who have significantly transgressed their roles and duties of office. Projects are in various stages of their life. One thing is certain, we are committed to the long journeys that many of these cases will require. History is filled

OUTA FIVE YEAR TIMELINE



MARCH 2012

OUTA is established (SAVRALA, RMI, SATSA, QASA, SANCU)



APRIL 2012

E-tolls interdict



2013

OUTA's social media platform launch



AUGUST 2015

OUTA moves into new offices, in Randburg, Gauteng



SEPTEMBER 2015

OUTA launches e-toll defence umbrella

with civil activist organisations that were unable to survive the long haul of the journeys they set out on, usually due to a lack of funds. OUTA is aware that many of the matters we tackle take years to conclude, which is why we restructured our funding model based on a crowd-funded platform. This allows us to withstand Government's tactics of 'attrition through lawfare'.

Our continued growth is well positioned in today's South Africa, which has an empirical need for effective civil intervention. Looking back at the unfolding development of poor governance over the past few years, I thought we'd seen it all in 2015 and 2016, never expecting that the infiltration of brazen and overt corrupt activities would rise further than it already had. The blatant, corrupt events of 2017 have been nothing short of spectacular, while events of state capture by leadership within Government have cost our nation dearly.

With each act of corruption that is uncovered and demands our investigation, it becomes increasingly clear that we need to work harder to grow OUTA's platform, by taking our method of investigation, engagement, exposure and litigation to new heights. Fortunately, we don't always have to run off to court to secure success. OUTA is becoming increasingly effective at holding people to account through not only the courts, but also through oversight bodies such as the Competition Commission, NERSA, SCOPA, SAICA, SIU, Debt Collectors Council and various Parliamentary Crisis Committees.

However, we remind ourselves that we are not an organisation that tackles issues for the mere sake of doing so, or because we have 'nothing better to do'. We exist because Government is

failing in its duty to tackle the scourge of corruption and gross maladministration in South Africa today. We exist to apply the rule of law and our nation's constitutional values. We exist because we are passionate South Africans who love this country and are saddened by its reduced potential and growing poverty.

While we are somewhat encouraged by the Presidency's recent calls to launch a corruption-fighting programme, we can only respond by saying that we've seen this movie before. The proof will be in the eating of this cake, but if the Presidency is serious about its plans to fight corruption, OUTA will be at the front of the queue to provide information and assistance. They simply need to ask and engage us. Any serious corruption-fighting entity within Government will be regarded as a friend, assuming it has sincere and sound intentions. However, if they are merely trying to 'look busy doing what is right', or have a skewed mandate or limited powers to investigate, then we believe they will be wasting tax-payers time and money, and we will certainly not play their game.

I look forward to continuing to work with the excellent, expanding OUTA team. As we scale ourselves up to do more of what we do, one thing is certain: OUTA has its work cut out for it for many years to come. Even if we see a change in regime, or new leaders in Government being elected who choose to do what's right, OUTA will continue to hold those responsible for past, current and future transgressions, to account.

Wayne Duvenage
OUTA Chairperson



FEBRUARY 2016
OUTA name change:
Organisation Undoing
Tax Abuse



MAY 2016
OUTA interdicts
SAA BnP Capital
transaction



NOVEMBER 2016
OUTA introduces
Portfolio Project
Management structure



FEBRUARY 2017
OUTA breaks through
100 000 followers on
Facebook



JUNE 2017
OUTA lays case
against President
Jacob Zuma



3 STRUCTURING OUTA FOR SUSTAINED CIVIL INTERVENTION

What is active citizenry? We believe that 'active citizenship' is the act of people going beyond their day-to-day lives, participating in various activities trying to make a difference in other people's lives, eventually impacting society as a whole, be it at a local community level, a national level or even impacting certain democratic principles that matter.

Wikipedia informs us that active citizenship is a philosophy and is generally driven by organisations or institutions who expose or advocate the need for the state and businesses to remain responsible to the people and society as a whole, on a host of issues, whether environmental, social or economic in nature. While these entities may not have specific governing roles, they hold sway and can enact change through the empowerment of society with knowledge, protest action and litigation. Active citizenship generally brings the debate of 'rights' versus 'responsibilities' into play. Given the rights by our constitution, people have certain responsibilities to uphold. The implication is that an active citizen is one who fulfills both their rights and responsibilities in a balanced way.

The problem with this concept is that although rights are often written down as part of law, responsibilities are not well defined. There may be disagreements amongst the citizens and the state, or people in authority, as to what the responsibilities are. In today's hectic world where one's time is short, becoming an active citizen is made easier by civil action organisations (such as OUTA), who survive on donations made by society to assist them in doing good work to challenge the Government in areas of wasteful tax expenditure and corruption. By simply donating on a monthly basis, citizens feel empowered, and they feel that their big or small donations make a difference to society.

They feel like an active citizen.

I believe if a private citizen is able to affect public opinion in a constructive way he doesn't have to be an elected public servant to perform a public service.

Warren Beatty

THE FIVE KEY CATEGORIES OF OUTA'S WORK:

1.

PROJECT MANAGEMENT

Carried out through the Portfolio Management teams.

2.

INVESTIGATIONS

Providing the facts necessary to tackle corruption.

3.

RESEARCH

Ensuring that the various links and information relating to the issues being tackled are meaningful and aligned.

4.

LITIGATION

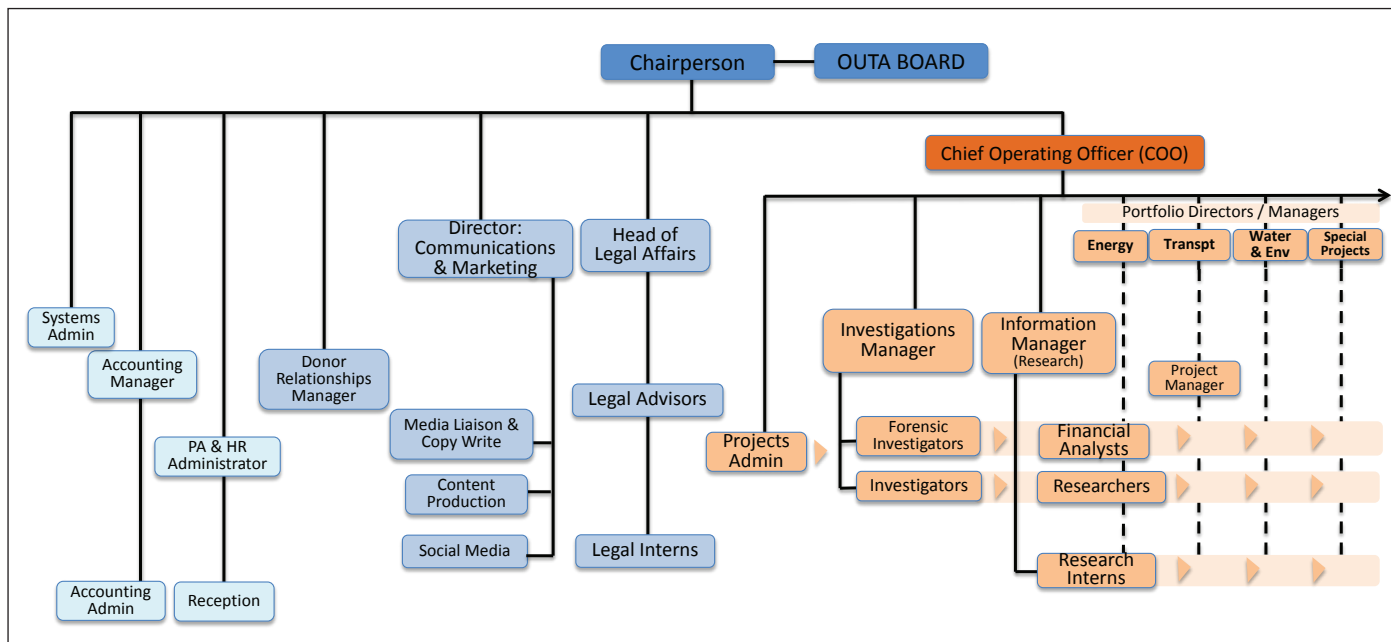
Case building for submission to courts or Chapter 9 institutions and other bodies.

5.

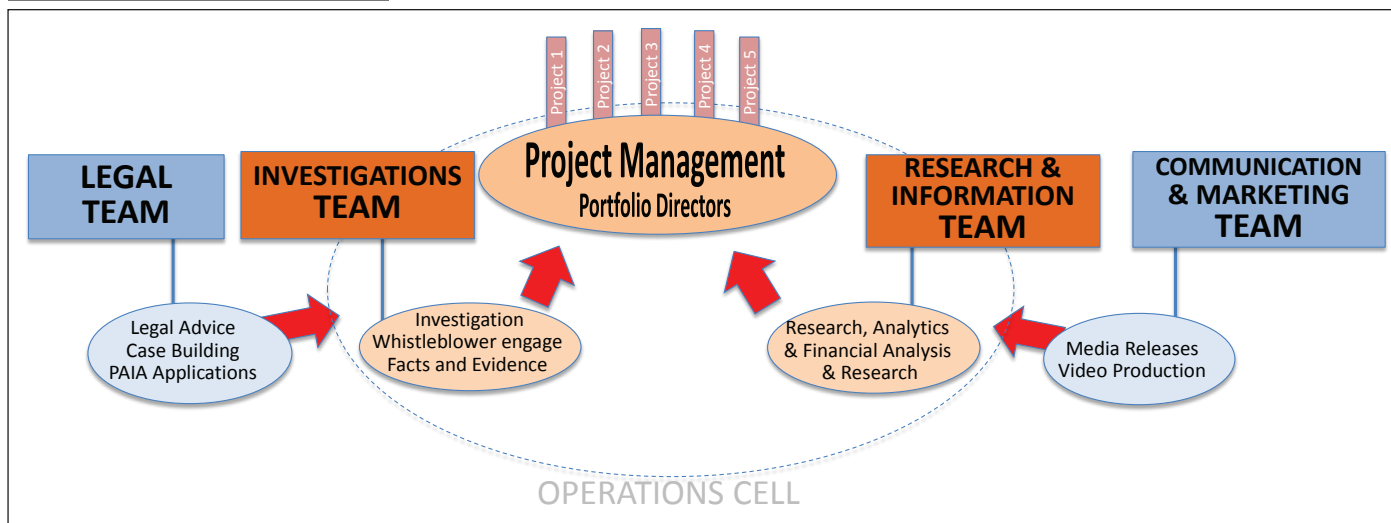
COMMUNICATION

Ensuring the media, public and supporters are kept informed of OUTA's work, progress and breakthroughs.

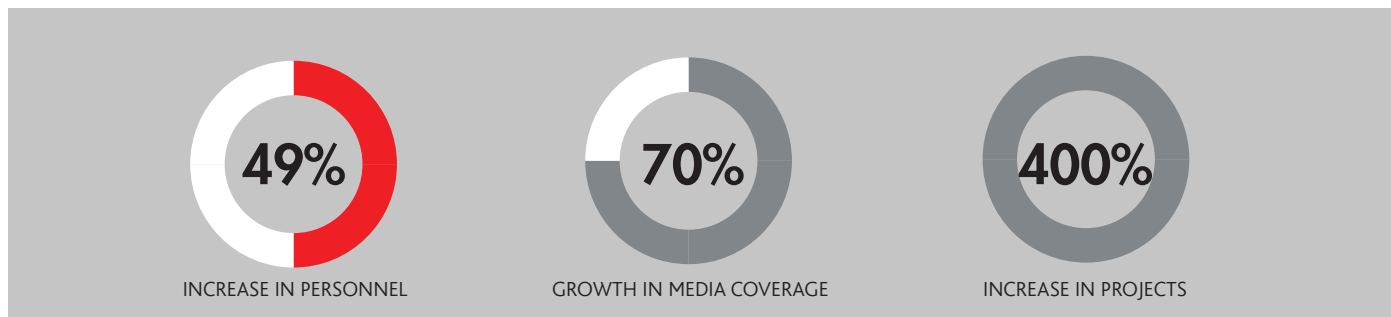
OUTA ORGANOGRAM



PROJECT MANAGEMENT



2017 MILESTONES:



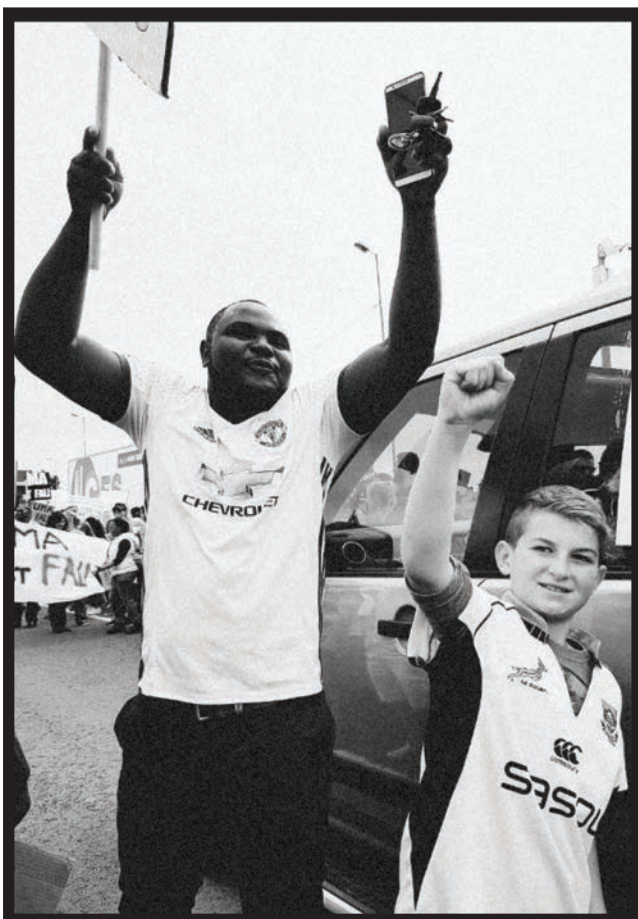


4 SCALING OUTA FOR 'EFFECTIVE CIVIL INTERVENTION'

Tackling those who abuse their power within government, through substantive corrupt activities, cronyism and gross neglect is not a matter of choice, but is regarded as essential at OUTA. This is why we exist, but existing is one thing, but to be effective is another.

What does effective mean to OUTA?

It is a number of activities that culminate in an energy that sees action taking place. Action that advances each project we select. While there are several processes that determine how we select projects and decide on what course of action each one takes, none of this is possible without good people working in focused teams. OUTA's manpower structure has been developed to scale itself to take on more projects with more teams, just as soon as it is able to afford to do so. Income generated is used to pay for salaries, offices, communication and systems, as well as for litigation and the provision of funds for future litigation.



OUTA'S PROJECTS INCLUDE:



ESKOM



SAA



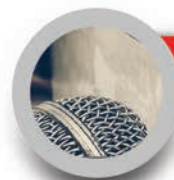
SANRAL



WATER



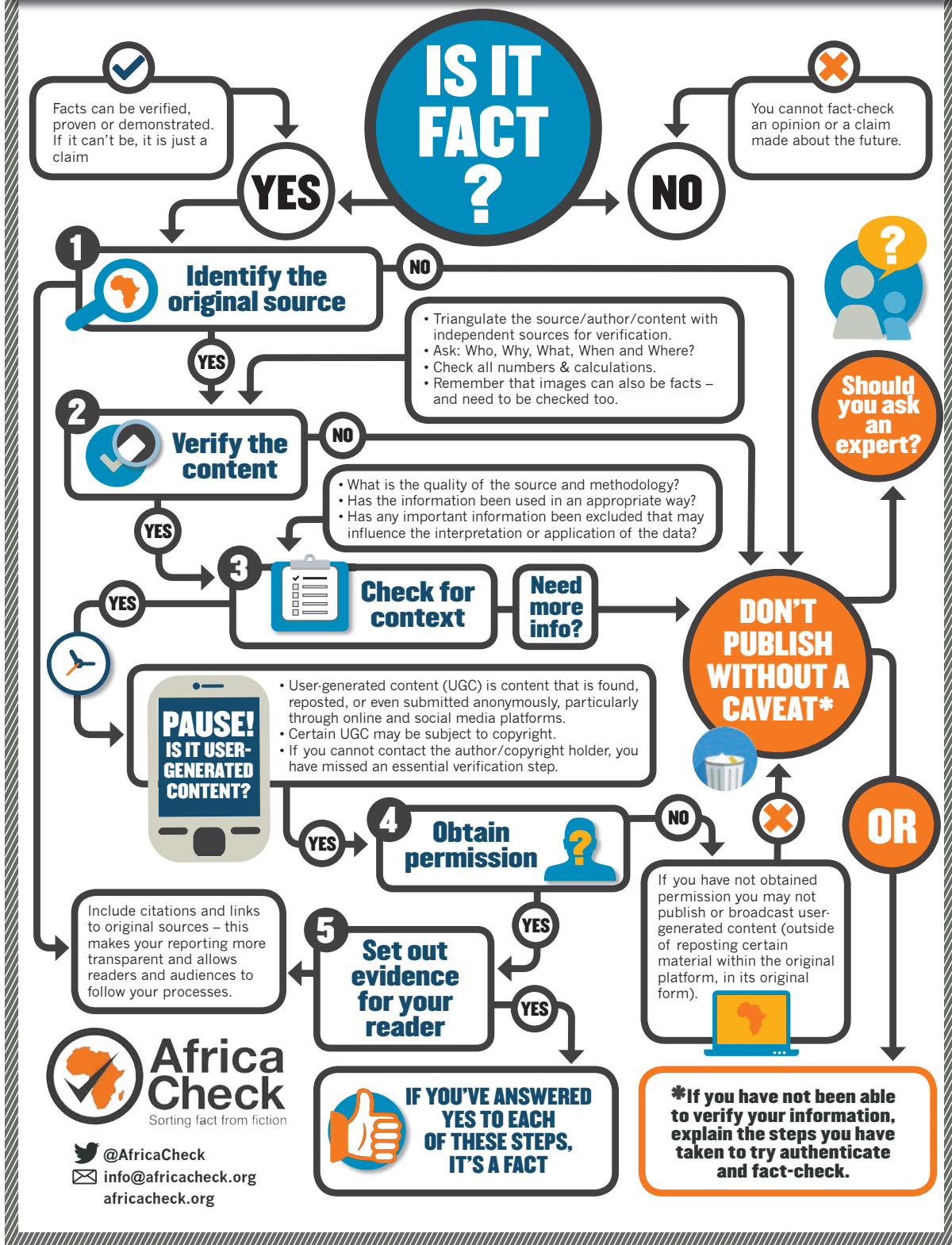
PRASA



SABC

MORE TO COME...

THE FIVE-STEP FACT-CHECK



PROJECTS UPDATE



TRANSPORT

1. E-TOLL DEFENCE

The Gauteng e-toll project was the reason for the birth of OUTA and hence holds special significance for the organisation and Gauteng citizens at large. The legal fight against this unjust system has been long and tough, with many hurdles emerging along the way. But the end is in sight, mainly because of society's resilience on this matter.

OUTA and SANRAL have exchanged pleas and declarations for the court case showdown. OUTA has built a formidable case. We are confident that the processes and procedures prescribed have not been met and that the courts will concur, thus finding the system to be unlawful. For more details view a recent media statement from OUTA, at <https://www.oua.co.za/gloves-off-oua-files-e-toll-court-papers>.



We expect the case to come before court only in the third quarter of 2017 because of time-consuming legal processes and a congested court roll. We also expect that this case will be drawn out and costly, as SANRAL uses all legal means available to them. Notwithstanding this, we believe that Government will have no option but to come to its senses on this matter – soon.

2. DELINQUENT DIRECTOR ACTION: DUDU MYENI

In January 2017, OUTA instituted legal proceedings against the Chairperson of the South African Airways (SAA) Board of Directors, to declare her delinquent and unfit to be a director. This is based on her (mis)handling the acquisition of critical aircraft to replace SAA's aging fleet. Myeni intervened in critical internal processes and in doing so overstepped the mandate of the board and ignored the prescripts of the King III Report on Corporate Governance. Her actions exposed SAA to losses amounting to billions of Rands, not to mention loss of credibility internationally and the loss of competent senior staff. The Companies and Intellectual Property Commission (CIPC) has declared that her actions are not in line with what is in the best interest of the company as she willfully misrepresented the board in dealings with her Minister.



Dudu Myeni

We believe that this national asset is being mismanaged by a person poorly equipped to act as a director, particularly for this mammoth task. The case will unfold throughout 2017 – we will keep the public informed via our website www.oua.co.za.

3. COMPLAINT LAID WITH SAICA AGAINST SAA'S YAHKE KWINANE

Yahke Kwinane holds the respected qualification of Chartered Accountant and, as such, is held to a high standard and account. Her behaviour and actions as the Interim CFO at SAA, contravened the organisation's code of conduct and brought the SAICA organisation into disrepute. Furthermore, her actions contradicted good codes of Governance, contravened basic procurement principles and along with the Chairperson, misled the board.



Yahke Kwinane

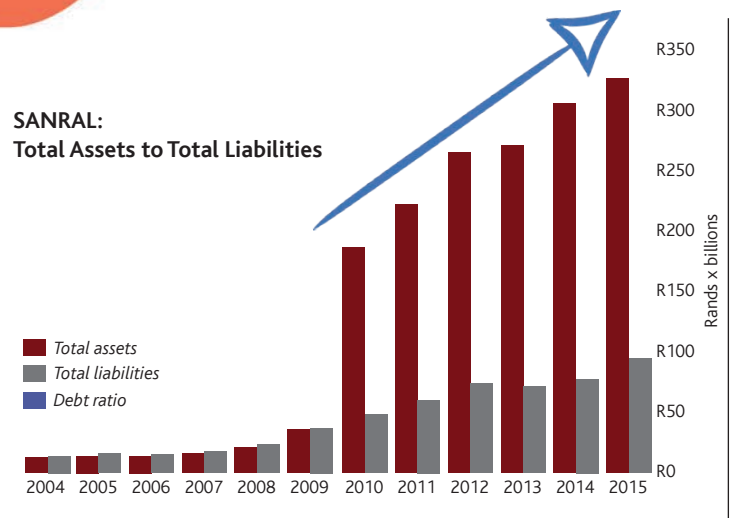
We believe that Kwinane is not fit to hold the professional title of Chartered Accountant and, as such, we have instituted proceedings to have her stripped of this title.

4. SANRAL FINANCIAL IRREGULARITIES

The Standing Committee of Public Accounts (SCOPA) questioned SANRAL in December 2016 on its financials and poor state of reporting. In particular, the committee expressed concern about a high level of fruitless expenditure. The Auditor General had previously raised major concerns which were still not attended to, and this concerned SCOPA.

OUTA has communicated its concerns with relevant authorities, particularly those relating to its outstanding debt and the inflated value of SANRAL property, including roads. The e-toll debt stands at R9.2-billion at the end of the 2017 financial year. It is OUTA's contention that the overwhelming majority of this debt cannot be collected and should instead be recovered through the fuel levy.

SANRAL:
Total Assets to Total Liabilities



We believe further that SANRAL's debts started prescribing on 4 December 2016. This means that debt older than three years (to the day) is 'lost' to the institution and should be written off. We also maintain that the value of SANRAL has been inflated artificially, by way of questionable revaluations of its road assets, to enable it to raise higher bonds than would have been possible at its previous valuation.

5. NAZIR ALLI PERJURY CHARGE

The Western Cape Appeal Court has found that Nazir Alli, previous CEO of SANRAL, was not truthful in his testimony regarding the approval process for the establishment of the Winelands toll road. In particular, he misrepresented the fact the board had officially approved the project, when in fact it had not. The court dismissed the SANRAL case, based on this fact as well as other reasons. We believe that this was a serious contravention of his responsibilities and, consequently, OUTA has launched a case of perjury against the former CEO.



Nazir Alli

6. ROAD CONSTRUCTION COSTS PROJECT

Following OUTA's first research and project in 2016, pertaining to the seemingly high cost of the Gauteng Freeway Improvement Project (GFIP), we decided to conduct a more in-depth study on this matter. The initial position paper *GFIP Construction Costs and Sanral's Odious Debt - Feb 2016*, used international benchmark exercises to assess how SANRAL compared with regards to cost management of the GFIP. The GFIP project cost R17.9-billion – or R90-million per kilometre. For a project to upgrade 200km of existing freeway, add one lane (at times dual lanes) in each direction, we believed the price tag was excessive and decided to probe the matter. We commissioned two road construction experts to conduct a detailed re-pricing of one of the GFIP work packages that we obtained. A variety of costing methodologies were applied and cross-referenced. In the final



GFIP

PROJECTS UPDATE



TRANSPORT

analysis, the estimated cost of the GFIP project was calculated to be about R9-billion, which corroborated the earlier finding that the GFIP was excessively priced – more than double the cost. The revised position paper details our findings: *The Road to Excess*, https://www.ota.co.za/wp-content/uploads/2017/02/OUTA_RoadConstructionReport.pdf.

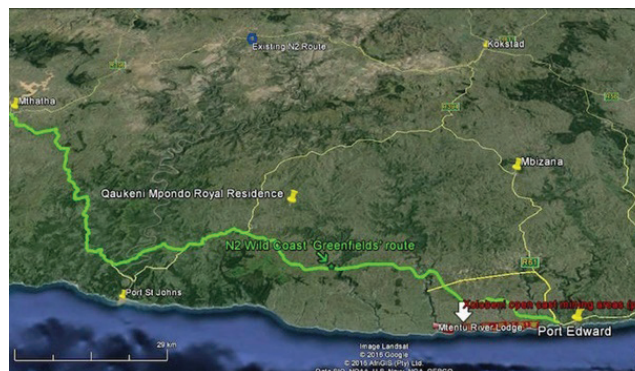
OUTA followed a similar investigation process into SANRAL's toll road plans for the N2 Wild Coast. A report was commissioned from two transport economists, Prof Gavin Maasdorp as well as Mr Allen Jorgensen, to verify SANRAL's financial calculations with respect to its stated economic benefit of the R11-billion scheme, particularly within the context of a weak South African economy. The economists concluded: "The construction of the green fields portion of the N2 Wild Coast toll road should be suspended pending a thorough review of the economic viability of the project that, taking into account our comments in this report;... is based on better and up-to-date data; takes account of the prevailing economic climate; takes account of both the Government's stated policy of shifting freight traffic from road to rail and of the social costs of shifting freight from rail or ships to road; and assesses in more detail the manner and extent to which the communities and economic activities in the areas of Pondoland traversed or bypassed by the proposed new road will be impacted in terms of costs and benefits."

SANRAL's response has been to bulldoze ahead, – this despite other transport economists coming out in support of the Maasdorp-Jorgensen recommendations. However, the coastal residents of the Amadiba community, encouraged by OUTA's e-tolls challenge and the city of Cape Town's victory in stopping SANRAL's N1, N2 Cape Winelands scheme, continue to challenge SANRAL for failing to engage honestly with them. With strategic support from OUTA, they were able to convince SANRAL's new CEO, Mr Skumbuzo Macozoma, to visit the affected community under the authority of their legitimate traditional leaders, and hear their objections first hand. That was the first time in the 16-year history of the scheme that SANRAL has done that.

Amid several contentious issues surrounding the scheme, OUTA believes that the R4-billion price tag for two mega bridge crossings over the Mtentu and Msikaba gorges would amount to a gross abuse of tax money. Hence we will continue to assist the Amadiba coastal residents to articulate an alternative use of such an investment in road infrastructure and particularly one that has a direct, tangible developmental benefit to local residents.



Prasa diesel locomotive



N2 Wild Coast Road

LEARNINGS FROM OUR TRANSPORT PROJECTS

A key lesson OUTA has learned from our contest with SANRAL and SAA is that it is indeed possible to bring State Owned Enterprises to heel, by invoking the provisions of the Public Finance Management Act, and the King Report.

South Africa has achieved international acclaim for its implementation of the King Commission's progressive raising of the bar with respect to sound corporate governance practice. One would therefore have expected that State Owned Enterprises (SOEs) would be leading the way in showing commercial companies how to adhere to King III. Regrettably, and somewhat embarrassingly, our State Owned Enterprises have become case studies of the opposite.

This is because the King Reports process has worked from the assumption that in "an emerging global civil economy of accountability" as Judge Mervyn King terms it, boards of directors would increasingly be expected by stakeholders, and more directly shareholders, to show that they were earning the social and environmental licence to operate, rather than merely showing compliance to financial and tax regulations in their audit reports. Shareholders and the investment community were thus empowered by the King Codes to exercise more influence over boards of directors to contribute to global imperatives of social, environmental and economic sustainability. There have been many examples of shareholder activism campaigns that have succeeded in holding commercial companies to account.

Since the boards of SOEs are appointed solely by cabinet ministers, the avenues open for shareholder activism when a minister fails in his or her duty, become more complex. Lobbying MPs to exercise their parliamentary oversight more diligently, taking to the streets in public protest, media advocacy through social media and press campaigns, and complaints to Chapter 9 institutions, are all constitutionally-mandated options for active citizens to challenge injustice. However, without simultaneously invoking section 33 of the Bill of Rights – *the right of access to a court or other independent and impartial tribunal to resolve their disputes* – these other measures may not have a long term or real impact. When a corrupt executive also commands a spineless majority in the legislature, holding government to account means that strong, precedent-setting judgements from the judiciary are critical if they are to be of lasting value to citizens.

Moreover, court judgements have major ramifications for the executive and legislature. Several examples exist to illustrate this



Dipuo Peters

point, including the standoff between the PRASA board and Minister of Transport, Dipuo Peters, which was resolved swiftly. Three years ago, in the early stages of the crisis, OUTA was approached by an inside representative who, impressed with our campaign against e-tolls, was desperate for help in his efforts to roll back the mudslide that Lucky Montana had precipitated. At the time, OUTA lacked the capacity to do much beyond offering moral support. Fortunately the PRASA board rose to the challenge. Lucky Montana was fired, but the intervention by Minister Peters to second a new acting CEO, Collins Letsoalo – who then demanded a 350% salary increase and a chauffeur – came unstuck, leading to a standoff between the PRASA board, under Chair Popo Molefe, and Minister of Transport Dipuo Peters.

After Minister Peters dissolved the PRASA board and appointed former SANRAL CEO, Nazir Alli, to chair a new board of directors, fearing a repeat of the 'Hludi Motsoeneng' saga, OUTA had the resources and capacity to intervene. Ultimately, the deft action by PRASA Chair Popo Molefe, in obtaining a court injunction to set Minister Peters's irrational action aside, saved the day. It appears that new Transport Minister, Joe Maswanganyi, is also keen to remove the current PRASA board – OUTA will intervene in the cases which Popo Molefe has introduced to cancel corrupt contracts.

Minister Peters has resigned as a Member of Parliament. As part of a new, positive working relationship with Minister Maswanganyi, OUTA would like to share lessons learned over the past five years with the Transport Ministry, for the benefit of the newly-appointed executives and ministers. Meanwhile, our legal war chest has been conserved, awaiting our next intervention.

While PRASA seems to be getting back on track, Eskom had a major corporate power failure, with another Minister, Lynn Brown displaying an astonishing incapacity to learn and embrace the errors made by a succession of cabinet colleagues.

PROJECTS UPDATE



ENERGY AND ESKOM

ENERGY AND ESKOM

OUTA's focus on Energy and Eskom began in 2016, when we elected to provide strategic support to the Southern African Faith Communities Environment Institute (SAFCEI) and Earth Life Africa (ELA), who had been working to expose the fact that South Africa's long-term energy position was being decided in secret deals, with foreign business interests, behind closed doors.

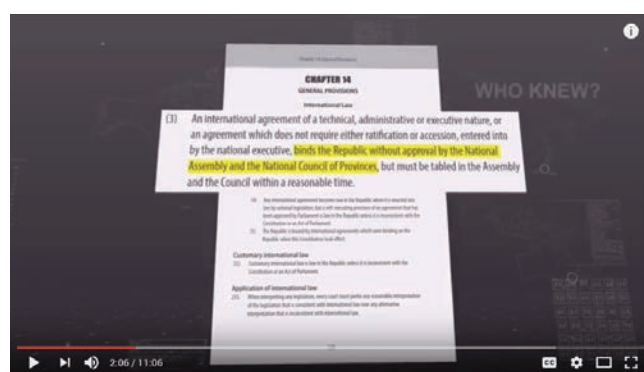
In October 2015, court papers were filed against the Department of Energy, National Parliament, the National Energy Regulator (NERSA) and President Jacob Zuma, challenging various aspects of the nuclear procurement process. See <http://safcei.org/safcei-ela-jhbs-nuclear-campaign-and-court-case/> for details.

OUTA funded and produced a video in support of ELA and SAFCEI's court application. The purpose of the video was to demonstrate that introducing nuclear energy would be an enormous waste of tax revenue, was completely unaffordable to South Africa, was unnecessary (given local demand) and reeked of corruption – not to mention the environmental and scientific risks associated with 'nuclear'.

Through the video (see <https://youtu.be/QrjnbK9daI>), our aim was to create public awareness about the matter. To date the video has received over 27 000 views since it was uploaded in September 2016. It graphically illustrates how destructive the nuclear deal will be, for generations to come.

The decision by the Cape High Court in favour of the SAFCEI/ELA application has essentially kicked government's current plans to rush the nuclear deal into touch, along with Eskom's recently-announced plans to invite requests for proposals from potential nuclear suppliers in the coming months. However, given the enormous financial interest of Russian state-owned nuclear energy entity, Rosatom, who stood to secure the contract, we have little doubt that the nuclear energy ball is going to be thrown into play again.

OUTA is pleased to have employed the services of veteran energy analyst Ted Blom, to shape OUTA's game plan. Having worked for Eskom and in the energy sector for many years, Ted brings with him valuable institutional memory and a savvy sense of the real underlying issues. In the April edition of OUTA's member magazine, 'Inside OUTA', we profiled Ted Blom and explained how he has doggedly kept a watchful eye on the way in which Eskom acquires and spends its revenue (billions of Rands) and how he successfully thwarted Eskom's stealth strategy to secure a tariff increase for a 'critical day price tariff' to milk even more



SA's Nuclear Bomb - Why Government's Nuclear Deal Will Destroy SA

OUTA - Organisation Undoing Tax Abuse

27,878 views



s Nuclear Bomb - Why Government's Nuclear Deal Will Destroy

money – not to procure and supply energy efficiently, but to fund the Gupta's state capture game plan.

Brian Molefe's resignation, reappointment and reversal of his reappointment, in the wake of the Public Protector's damning report, was signaled as a massive blow for connected leaders seeking to further their corrupt ambitions. A chorus of protest rang out as South Africans learned of Molefe's R30-million 'retirement package', followed by reactions of shock and bewilderment (even from Luthuli House) when Minister of Public Enterprises, Lynn Brown, recommended that Molefe return as CEO of Eskom to remedy the problem. This was a clear acknowledgement that the R30 million 'pension' was highly irregular – Molefe had not reached the early retirement age of 55, nor had he been retrenched – but Minister Brown showed herself to be as lacking in judgement as Ministers Faith Mathumbi and Bathabile Dlamini in their discharge of their ministerial oaths of office with respect to the SABC and SASSA respectively (see elsewhere in the report).

Ted Blom suspects that if it was not 'Retirement' or 'Retrenchment' then it must be a third 'R', namely 'Robbery'! With the pressure mounting, Molefe found himself exiting Megawatt Park, for a second time – and then trying to remain employed.

- **The rationality for Eskom's ongoing existence is derived from a technical planning instrument known as the Integrated Resource Plan for Energy that the Department of Energy formulates with energy stakeholders.** The credibility of the IRP has been called into question for a lack of academic rigour, consistency and sensitivity to changing global and domestic circumstances. OUTA has entered the fray, to help ensure a credible IDP process that honestly addresses the likelihood that the demand for energy by our economy is likely to decrease, and that the need for extra energy, let alone an expensive nuclear option, is not going to happen within the projected time frame ending in 2030.
- **OUTA's input and challenge to government's National Energy Efficiency Strategy (NEES):** While we believe any call for energy efficiency strategy is a good one, we maintain that it should be based on facts and sound assumptions. OUTA has presented and tasked government to follow professional and acceptable processes in this regard.

- **Challenging Eskom's dominance with the Competition Commission:** OUTA is currently developing a strategy to force the unbundling of Eskom by dismantling its 'command and control' business model, believing it is fundamentally contrary to constitutional values and a violation of the Bill of Rights, notably Section 24, which sets out the duty of organs of government and SOEs to "protect the environment of the benefit of present and future generations".

Ted Blom argues that when it comes to generating electricity, Eskom should invest in cleaning up its dirty and inefficient existing coal-fired power stations, instead of building grossly expensive new plants. In terms of electricity distribution, he argues for better maintenance and management, especially considering that the national grid currently wastes 25% of electricity generated. The nub of the problem, he insists, is the concentration and centralisation of power in one structure.



Ted Blom is a mining and energy analyst and advisor, from policy to investment. As OUTA's Portfolio Director – Energy, his work focuses on mining and energy advisory, regulatory advising and consulting.

Prior to joining OUTA he worked at DownSouth Capital Partners, Bain & Company and the Boston Consulting Group. He was educated at Harvard Business School.

PROJECTS UPDATE



WATER / ENVIRONMENT

TACKLING THE LOOMING WATER DISASTER

South Africa was the first modern democracy in the world to entrench environmental rights in our Constitution twenty years ago. However, the 'right to an environment that is not harmful to our health and well being', and the right to 'ecologically sustainable development and use of natural resources', begins with sound and professional management of water resources.

Ongoing drought conditions, combined with alarming reports from National Treasury and SA Local Government Association (SALGA) around the basic water infrastructure programme of the Department of Water and Sanitation (DWS), have prompted OUTA to formulate an action plan. Using the findings of Auditor General (AG) concerning the waste of tax resources in capital

grants for water and sanitation infrastructure projects, OUTA has challenged Minister Nomvula Mokanyane with questions to determine whether the capital grants programme will provide a reliable flow of clean water, or a flow of money to corrupt and incompetent tender recipients.

OUTA investigated two capital grants for water infrastructure administered by the department: Regional Bulk Infrastructure Grant (RBIG), and the Water Services Infrastructure Grant (WSIG). OUTA's Julius Kleyhans worked with consultant Helgard Muller to document preliminary findings in report titled, *Preliminary investigation into abuse of capital grants used for water and sanitation infrastructure projects*, downloadable at <https://www.oua.co.za/wp-content/uploads/2017/05/Preliminary-Investigation-into-Abuse-of-Capital-Grants-used-for-Water-and-Sanitation-Infrastructure-Projects.pdf>



**“WE ARE SORRY
FOR THE
INCONVENIENCE.
SOUTH AFRICA RAN
OUT OF WATER.”**

THE REPORT HIGHLIGHTS THE FOLLOWING:

- The RBIG and WSIG are allocated a total of R27.275-billion over three years (2017/18 to 2019/20). Proper planning, project management and tight financial control are essential for the effective and accountable spending of such a huge amount, but these are lacking.
- A condition of RBIG funding is that it be used to fund only the social component of projects (infrastructure for basic domestic use). In practice, however, mega projects are being funded in their entirety. This delays the provision of basic services to beneficiaries in waiting. A typical example is the bulk water supply to Polokwane: while Limpopo's capital has more than enough financially-able water users who should pay towards the economic component of this project (for higher than basic services, commercial or industrial services), the reality is that taxpayers are footing the total bill.
- Following a performance audit in the department in November, the SA Auditor General highlighted project delays, poor performance by contractors, lack of planning and lack of capacity within the department, municipalities, water services authorities and water services providers. OUTA requested a report regarding the department's compliance with the AG's recommendations, but has yet to receive this.
- Millions of Rands are wasted in cost project overruns during construction, on contractors who cannot deliver, unqualified tender allocation and a lack of project management. In the Sebokeng regional wastewater scheme, the AG found that project delays (blamed on protesters demanding work on the project), cost at least R11-million.
- Completed projects deteriorate because operating costs and maintenance are not built into the plans.
- OUTA asked the department for a report on all projects completed with these grants, including an explanation of how projects are selected, lists of projects under construction and those in planning. The department has thus far failed to respond to our request.

We await the department's explanation on why the Sebokeng cost overruns, and why the spending on the Polokwane bulk water supply project should not be regarded as tax abuse.

WE ARE NOT GOING AWAY

While Western Cape citizens waited anxiously for winter rain to break the drought, so too does OUTA wait for Minister Mokanyane to respond to our requests for information. OUTA cannot bring the rains, but the constitution gives us the right, and indeed the responsibility, to compel the Minister to supply us with information.

Watch this space.



JULIUS KLEYNHANS

Portfolio Director – Water and Environmental Affairs

Julius was born in 1985 in Pretoria and grew up in the Magaliesburg region. He developed a passion for the environment from a young age and was directed into the position of creating a more sustainable future for his fellow South Africans and the lovely natural environment of South Africa. Today, Julius is part of the OUTA team, sharing our vision to challenge the abuse of authority in South Africa, particularly in the environmental and water sectors.

Julius studied ecotourism management and completed his Honours degree in Environmental Management. He is currently busy with an MSc in Water Resource Management. His work at OUTA focuses on Operations Management, Policy and Legislation, Governance, Environmental and Water Law, Local Government Law, Water and Sanitation and Project Management.

PROJECTS UPDATE



SPECIAL PROJECTS

In addition to tackling tax abuse in State Owned Entities, two other institutions that are crucial for South Africa's stability have attracted OUTA's attention over the course of the year: the South African Broadcasting Corporation (SABC) and the South Africa Social Security Agency (SASSA).

With headlines and news reports providing detailed and disturbing information about the governance crisis in South Africa, both these institutions needed swift, decisive leadership from their respective ministers to ensure their executive management decision makers were aligned with constitutional values and principles, faithful to legislated government policy and generally satisfying to the people they were mandated to serve.

However, Ministers Faith Mathumbi and Bathabile Dlamini proved to be more concerned about serving the corrupt agenda of their political master, than obeying their solemnly sworn oaths of office.

1. THE SABC CRISIS

In the wake of former Public Protector, Thuli Madonsela's report, which highlighted the fact that recently-dismissed SABC CEO Hlaudi Motsoeneng had lied about his qualifications, purged staff and increased his salary exorbitantly during his tenure at the SABC, his abuse of power was further revealed by former board members and journalists who testified of death threats after they objected to unethical editorial practices in testimony to the Parliamentary Portfolio Committee on

Communications. Former board members, who were irregularly dismissed and who resigned because of a shambolic situation within the board, also briefed MPs about the flouting of financial laws: the SABC providing resources to rival TV station ANN7 (owned by the Gupta family), for its breakfast shows; and about Muthambi's 'interference' in the 2014 appointment of Hlaudi Motsoeneng as CEO.

Mr Motsoeneng nevertheless continued to be the proverbial 'tail that wags the dog'. As parliament tried to take hold of the 'tail' it became evident that it was in fact attached to a tiger. The SABC board collapsed under the weight of its own internal contradictions, while Mr Motsoeneng simply continued his 'grandstanding charade of self-glorification'.

Minister Mathumbi failed so utterly in exercising her ministerial prerogatives to represent the common good, that the Portfolio Committee did something unprecedented: they called on President Zuma and parliament's Ethics Committee to 'consider her competence to hold office' – a euphemism for saying that she should be fired. However, defying all sense and good governance, President Zuma chose instead to reward her by making her minister of Public Services and Administration.

Meanwhile, another very serious crisis was unfolding and threatening to shred the social safety net that 11 million vulnerable and disadvantaged citizens rely on for subsistence...



Hlaudi Motsoeneng

2. THE SASSA SOCIAL GRANT'S DEBACLE

President Zuma displayed his unmistakable factional political agenda by failing to rid government of another errant cabinet minister, Bathabile Dlamini, who has disgraced South Africa and the governing party with her abysmal (mis)handling of the SASSA social grants crisis.

Given Bathabile Dlamini's election as President of the ANC Woman's League two years ago, and given the precipitous endorsement of Dr Nkosazana Dlamini Zuma as the preferred candidate of the ANCWL in the upcoming ANC presidential contest, Minister Dlamini nailed her ANCWL colours to Dr Dlamini Zuma's mast, even when her duties required her to act in obedience to her oath of office as a servant of the people. The fissure that this caused within the ANC caucus in parliament was evident when concerned ANC MPs joined with opposition members to scrutinise her performance to see how she would remedy the unlawful contract that SASSA had signed with Cash Paymaster Services (CPS), to handle grant payments.

Minister Dlamini's long-time advisor, well-respected Zane Dangor, disclosed that in March 2016 she ignored his advice and began interfering in the work of a task team that had been established to bring the social grants payment system into line with policy and seek a solution to Constitutional Court's ruling that the CPS contract was invalid. Instead, Minister Dlamini contracted irregular 'workstreams' to put together a plan to take over the payment of social grants. Dangor and the CEO of SASSA, Thokozani Magwaza, were alarmed to discover that Minister Dlamini's real agenda appeared to be to derail the work of the task team and usurp the agency's roles and responsibilities. The workstreams were instructed to report directly to the minister. To date, they have consumed around R50-million of tax payers money, with little to show for it.

Dangor was appointed as Director General of the Department of Social Development in November 2016. He became even more alarmed by Minister Dlamini's increasingly partial attitude to the interests of CPS, rather than the interests of the grant beneficiaries. As the Accounting Officer for SASSA, Dangor could not allow himself to be further implicated in what he realised was a 'self-created emergency to ensure a continued relationship with Cash Paymaster Services'. He resigned on 3 March 2017. Minister Dlamini's 'incomprehensible' action allowed the social grants crisis to be driven all the way to the Constitutional Court, only days away before the entire system was at risk of collapsing.

With the worsening scandals in the SABC and SASSA, OUTA was fortunate to welcome Ms Dominique Msibi into our organisation, bringing with her invaluable corporate leadership and management experience. Dominique has to hit the road running in the new portfolio of Special Projects – specifically helping to clean up the mess in the SABC and expose/thwart corrupt agendas behind the SASSA grants crisis. She met with whistle blowers, journalists and people in the know, to drill down into the underlying problems in each institution and identify what strategic levers OUTA should take hold of in support of other forces for positive change.

The task of fixing the mess in the SABC rests with its new interim board, who have lost no time in taking charge. They have cracked the whip to tame the tiger, and placed him under an internal disciplinary procedure.

Given the evidence of criminal violations of the Public Finance Management Act, relating to Mr Motsoeng's gross misspending of public money, OUTA decided to lay charges against him. Unfortunately, Minister Bathabile has continued to ignore reason, turning what appeared to be a deliberately manufactured crisis to favour Net1 and CPS, as the Constitutional Court had no alternative but to extend the contract of Net 1/CPS.

As OUTA works to keep the public abreast of developments in our Special Projects division, our supporters can expect Dominique Msibi to be an active participant on media platforms, sharing her insights and being 'hard on the problem and gentle on the people'.



*Dominique Msibi
OUTA Portfolio Director – Special Projects*



6 GOVERNMENTS CRISIS OF LEGITIMACY: DRIVING CALLS FOR CIVIL DISOBEDIENCE, TAX REVOLTS AND PROTESTS

Few South Africans would argue with the fact that the country's Government is suffering from a crisis of legitimacy. People who read their payslips each month, question the return on investment of their tax deductions, which appear to feed a sick system of hidden agendas and dubious leadership conduct designed to condone mediocrity, waste, greed and corruption.

The basic premise of societal order is driven by the public's view of how a Government conducts itself, within the premise of its own rules and laws. After all, it matters first and foremost that Government demonstrates an impeccable adherence to the laws of the land, before it can expect its citizens to do the same.

This is the premise on which **trust** is built. The same trust that drives the success of a range of public policies that depend on behavioural responses from the public; the same trust that is necessary to increase the confidence of investors and consumers, and becomes essential for key economic activities.

While many citizens bemoan the general notion of paying taxes, doing so is the necessity of a binding social contract between the people and those elected to govern their nation's affairs. This is the essence within which a structured and well-managed society should thrive.

But what happens when a Government strays from its side of the 'social contract' and loses the trust of tax-paying citizens? How does the tax-payer react to declining conditions of, for example, an ailing health system or plummeting education outputs? What should they do about crumbling infrastructure, or a putrid national broadcaster that no longer serves the interest of the people? How should society react to dubious contracts that largely benefit connected cronies?

Do governing authorities expect the public to be immune to the rising wasteful expenditure and corruption within the state, and be content with housing backlogs, growing water quality issues, rising cost of electricity, fuel levies and general taxes?

In addition to capital and talent flight that occurs following abusive Government conduct, the 'fight' is taken to the streets by rising levels of protesters who believe they have no other way or means to express their frustration.

In the middle class and small and medium size businesses, it is the cry for tax revolts that has begun to raise a serious concern.

Tax revolts are generally regarded as unacceptable behaviour, but which become justified for those who have reached the end of their tether. Some call it tax resistance. Others refer to it as civil disobedience. Whatever form it takes, a government gets less than it should or could, which inevitably means higher taxes the following year – and so the downward spiral begins.

Despite the general negative sentiment associated with paying tax, one shudders to think of what life would be like in a country where there is large-scale tax revolt or non-compliance. It is difficult to recover from these events. In reality, however, large-scale tax revolts don't happen. They require the co-ordinated effort of big business, who pays the bulk of PAYE, Vat and corporate taxes. The question is, *does big business have the appetite to cross swords with Government?* Until now, the answer has been no. But there are clear signs of a restlessness and discontentment within the business sector.

RESPONDING TO THE CIVIL ACTION CALL

The nationwide civil society driven protest marches on 7 April 2017, sent a clear message that once-placid, middle-class South Africans are alive to the calling of civil action. This is where the biggest potential impact against Government lies. This is where society's war against state capture, maladministration and corruption exists, with sizable impact in those areas where the administration of taxes, tolls and levies are cumbersome and enforcement capacity is too weak or costly to stave off the onslaught of a wide-scale, focused tax revolt.

Enabled in today's world of free and instant media, moral courage justifies civil action and disobedience in areas where it feels right to stand up and counter the abuse, even without needing to challenge the fabric of the national tax system.

A good example of a focused tax revolt is that of the e-toll scheme in Gauteng. The laws may be in place, but does this legally justify the scheme? In the case of e-tolls, definitely not, with the authorities' lack of due processes when introducing the scheme, along with other factors which have justified the onslaught of a massive civil disobedience campaign.

Another deliberate, public tax revolt underway in South Africa is the one against TV licenses. The reality is that a TV license is a justified tax and should therefore be paid. The laws and acts that govern TV licenses are sound. Sadly, these laws have begun to suffer from a crisis of legitimacy, emanating from the public's declining respect for the government-controlled South African Broadcasting Corporation (SABC). In reality, a TV



license is a small amount to pay in Rands, but momentous in principal. Government's conduct today has raised questions of its legitimacy in the minds of millions of citizens. The wasteful expenditure of tax money on dubious projects and unwarranted conduct has stirred a focus on those "easy to tackle and hard to enforce" taxes and levies – such as e-tolls and TV licenses – that will not survive the onslaught thrown at them by society. Other taxes may well also suffer, all as a consequence of Government's growing crisis of legitimacy.

Such is the nature of the focused tax revolts and civil disobedience, which is essentially the conduct of socially justified civil disobedience today and shapes the new laws of tomorrow.

THE OUTA CREDO

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

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

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

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

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

We the people, society and business, have two choices;
We can look away and do nothing.

Or we can take action to retard and halt the decay.

AT OUTA, WE CHOOSE TO TAKE ACTION.

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

OUTA
ORGANISATION UNDOING TAX ABUSE

Holding Government Accountable

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