

**09 April 2015****OUTA CHAIRMAN'S REPORT**

Some sixteen months ago, The Department of Transport and Sanral decided to forge ahead with their plans to launch the e-toll system, against the wishes of the public at large, their critics and the numerous business organisations who warned of the scheme's irrationality and many potential problems.

This time last year, some four months into the schemes operation, the levels of public anxiety and anger around e-tolls were at an all time high. Sanral's PR and marketing messages threatened to criminalize those who did not comply and this gave rise to a growing level of compliance under duress, as opposed to acceptance or a keen support for the e-toll scheme. At the same time, thousands of billing errors were mounting from the scheme's inefficiency and maladministration, due to their reliance on inaccurate data supplied from the eNatis licensing system. Volumes of inaccurate vehicle owner data, combined with large scale civil disobedience against an unjust decision, became Sanral's nemesis. Add to this the unfortunate growing practice of vehicle licence plate tampering, along with the cumbersome nature of the entire e-toll process, it was no surprise that the scheme became unworkable and bogged down with collection costs that far exceed the revenues being generated.

In effect, the e-toll system fell into a crisis of legitimacy, which in turn heightened the call for civil disobedience and the expected reduction in what little public compliance had transpired, began after June 2014. The scheme became unsustainable and the stage was set for mounting hurdles that would eventually give rise to its failure to secure required revenues to service the repayment of the debts and the operational cost of collection.

Despite Sanral's massive multi-million rand marketing spend throughout 2014, along with their messages of intimidation and misinformation, OUTA's research along with confirmation from statements made by the Minister of Transport in Parliament, showed that the scheme's compliance levels peaked at around 45% in June 2014, generating R120m per month (as per Sanral's media statements), which was well short of their original target of R250m per month, but in line with their vastly downscaled target at the time.

Over the past year, we have witnessed a number of setbacks to Sanral's e-toll plans, all of which intensified the civil courage of the Gauteng motorists, further sinking the e-toll ship into the realms of unsustainability:-

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- During the first half of 2014, a few concerned citizens raised complaints to the Advertising Standards Authority (ASA), pertaining to Sanral's misleading advertisements regarding their claims about (a) the number of e-tags sold, (b) that their cameras were providing safety by watching over the people and (c) that 82,8% of tagged road users would pay less than R100 per month in e-toll fees. In May 2014, the ASA found Sanral's advertising to be unsubstantiated and misleading on all three counts and were ordered to remove these advertisements.
- The next problem for Sanral was the massive loss of votes for the ANC in the May 2014 Gauteng elections, which very nearly cost them their majority in the provincial legislature. The ANC's share of the vote dropped by 10 percentage points from 63% in 2009 to 53% in 2014. The main factor for this decline was recognized as the launch of e-tolls in the province, which in turn had a significant impact on the relations between provincial and national politics in the ANC. Sanral's leadership is on record in saying they did not believe the e-toll matter would have an impact on the electorate of Gauteng. They were wrong.
- Consequently, on the 10<sup>th</sup> July 2014, the newly elected Premier of Gauteng, David Makhura, announced his plan to set up a 13 person E-Toll Advisory Panel to conduct a thorough socio-economic impact assessment of e-tolls in the region.
- In July 2014, Sanral and the NPA had indicated their intention to begin prosecuting e-toll defaulters, however, Minister Peters wisely instructed Sanral to halt such plans, because of massive billing problems and chaos in the system, and maybe also due to possible widescale negative public reaction anticipated.
- During the Gauteng E-Toll Panel hearings between September and November 2014, virtually all business and civil society entities denounced the e-toll scheme and blamed its existence for high negative impact on the socio-economic conditions in the region.
- In addition, on 3 October 2014, Paul Mashatile, the Gauteng ANC's Chairperson, launched a scathing attack on Sanral's management of the e-toll scheme and their disdain toward the work of Makhura's e-toll advisory panel. Mashatile made it clear that the ANC in Gauteng did not support the scheme in its current form.
- On 4 November, Sanral did an about turn and decided to engage with Makhura's e-toll Advisory Panel, resulting in a series of blunders which heightened public anger, not least of all was Minister Dipuo Peters comment that a fuel levy increase of R3.65 would be required to fund the GFIP bonds outside of e-tolls. This intensified when Dr. Roelof Botha announced that the poor should 'shut up' and remain out of the e-toll debate.
- Later in November 2014, during an inquest into a fatal accident collision on the M1, the State subpoenaed electronic data from Sanral, which required accurate input about the time of the two vehicle's passage, as recorded by the e-toll system's gantry cameras. The information supplied by Sanral was grossly inaccurate and proved to be "inconsistent and unreliable". Subsequently the e-toll information was discarded as being of no meaningful use in the court case, raising serious questions about the system's accuracy and reliability of information.

In the absence of Sanral's ability to enforce the e-toll policy and the growing public anger amidst the various developments as mentioned above, the already strong civil disobedience campaign has expanded beyond control, with many previously compliant citizens removing

their e-tags to stop paying their bills. This in-turn reduced the scheme's monthly e-toll revenue collections to around R60 million by the end of February 2015, estimated to be less than 23% of users paying for the use of the freeways.

OUTA's submission to the e-Toll advisory panel on 2<sup>nd</sup> September 2014, provided an opportunity for the organization to update to its earlier research and position paper titled "E-Tolling at an Impasse", published in February 2014. OUTA's updated paper, now titled "Beyond the Impasse" and published in August 2014, added further research and a clearer articulation of our case against e-tolling. It was submitted as OUTA's input and formed part of its presentation to Makhura's Advisory Panel on E-Tolls. In addition, OUTA produced and submitted a document titled "OUTA's Rule of Law Campaign" which emphasized that notwithstanding the past legal judgments that set aside OUTA's legal challenge to halt the scheme, the authorities faced a significant challenge if and when they ever decided to prosecute any member of the public for non-payment of e-tolls. In this regard, we maintain that the e-toll scheme's policies had become illegitimate and unenforceable.

#### **The E-Toll Advisory Panel: Good work but disappointing recommendations.**

Having heard the input from the Gauteng residents and businesses, the Panel compiled its comprehensive report, which was presented to Premier Makhura on 15<sup>th</sup> January 2015. Despite the overwhelming rejection of the scheme by almost all submissions made to the panel, and their acknowledgement of Sanral's failure to conduct a meaningful public engagement program, plus the disproportionately negative impact of the e-tolling on the poor, the Advisory panel recommended that e-tolling should remain a major part of the GFIP funding process. Cosatu, OUTA and other organisations rejected the recommendations because of this internal contradiction.

Given that Sanral and the Minister of Transport's attitude to the panel's process had shifted from aloof disregard at the beginning to active embrace at the end, we suspected that behind the scenes, political forces were at play to enable the final report to show that the initial lack of consultation had now been remedied by the Gauteng government's retrospective consultation process, with proposed modifications to the funding model.

Subsequently, on 6<sup>th</sup> February 2015 at the e-toll stakeholders engagement meetings held at Gallagher Estate, OUTA announced its disappointment that the panel has played down society's justification for civil disobedience, along with the panel's recommendation that Government should retain the failed e-toll scheme as a major component within a proposed hybrid GFIP funding plan. Additionally, OUTA raised its concerns that the additional elements within the hybrid GFIP funding scheme would give rise to other unintended problems and unnecessary increases to the cost of living in the region. At this same stakeholder hearings, the Gauteng ANC's Paul Mashatile also announced that the e-toll scheme was unacceptable to them.

Furthermore, OUTA disagreed that no legal risk would ensue to the enforceability of e-tolling, and that the retrospective consultation done by the panel, while thorough and worthwhile, could by no means be seen to have validated or legitimized e-tolling. On the contrary it proved our case, because it showed just how unpopular e-tolling was, and explained why Sanral was loath to conduct a meaningful engagement process at the outset.

### **The unchallenged Odious Debt of the GFIP Construction Collusion.**

For the past eighteen months, OUTA has also raised its concern at the lack of a strong approach being taken by Sanral to hold the construction companies to account for the collusive pricing practices during the GFIP. More than a two years has passed since the Competition Commission has provided SANRAL with the green light to take action, so as to claw back the estimated several billions of rands overcharged on the GFIP. Aside from a few rumblings by the Sanral executive to express their discontent at the construction company's collusive behavior, to date society has yet to hear of Sanral's *detailed* plans to prosecute and take action in this regard. As a result, OUTA once again repeats its call to the Minister for an independent body to be appointed to address this matter and make recommendations.

### **Ongoing Concerns at Sanral's behavior.**

OUTA has noticed over the past few months, that Sanral has been embroiled in other cases which point to a questionable conduct of public engagement programs with both the Amadiba community on the Wild Coast N2 Toll Road plan, as well as the Regional and local Government in regard to the Western Cape Winelands toll road project.

As regards the N2 Wild Coast tolled road project, we understand that Sanral's CEO, Nazir Alli's affidavit that seeks to challenge Attorney Cormac Cullinan's representation of the community, contain allegedly false statements. If indeed true, this could be seriously damaging for Mr Alli's reputation and the image of Sanral.

Regarding the Western Cape's Winelands freeway Toll plan, the Supreme Court's ruling on 30 March 2015 asks serious questions around Sanral's lack of transparency relating to their tolling model, the costs of the project and tenders awarded to the 'preferred bidder' / appointed concessionaire. OUTA believes that once the City of Cape Town's transport economists are able to analyse Sanral's Winelands e-toll model and proposal, they will expose the irrationality and unnecessary high costs of this project, which as with the Gauteng e-toll project, will highlight its unviability and lack of best intentions for society.

### **The future of Sanral is a worrying matter for our country.**

Sanral's credit ratings are teetering on the edge of junk status and as a result, has lowered the attractiveness of their bond auctions over the past two years. When one considers the mounting cases of litigation, declining sentiment and performance of this once respected SOE, there must surely be enough evidence to suggest that something is amiss with the leadership and performance of this State Owned Entity, one which appears to be out of

touch with our nation's constitutional values. When we combine this array of negative factors with Sanral's extremely slow pace in taking action against the collusive construction companies, OUTA believed it had every reason to submit a letter to the Deputy President Ramaphosa, in search of a meeting and request for the Deputy President to commission a social audit of Sanral's transgressions of section 195 of the constitution. Again, I reiterate that we have no wish to see the demise of Sanral, but rather that it is better enabled to discharge its public mandate with greater efficiency.

As I stated in my Chairman's report of last year, it remains OUTA's opinion that this country's cabinet and senior Government leaders were '*sold*' a most grandiose, ambitious and largely unworkable plan by Sanral, to extract funds from motorists for repayment of a social infrastructure upgrade, through the implementation of an irrational e-toll scheme. Furthermore, we remain convinced that due to context and the nature of our societal and economic challenges, the GFIP bonds ought to be settled using general taxes and fuel levies. This opinion was also expressed in a report by the Presidential Committee that conducted a review of State Owned Entities in May 2013, wherein they stated (in recommendation #21) that "*Social infrastructure, including roads, should rely less on user pays funding and more on general taxation*".

Reflecting back to what has transpired since 2007/8 when Sanral was supposed to be consulting with the public and stakeholders groups, I believe history will reflect society's appreciation toward OUTA's work. While it has been uncomfortable to adopt an antagonistic stance toward Sanral and its leadership, our approach has been very necessary in order to deepen democracy, accountability and transparency of public institutions. Had society managed to find a way to effectively challenge Eskom on its failing duties a decade ago, we might not today be sitting with the electricity crisis and the negative effects thereof on the economy.

While we await the authority's announcement of new plans (lower tariffs, scheme amendments and revised enforcement), aimed at enticing society to accept the scheme, we respectfully caution the authorities on their approach to retain e-tolling as a significant fund-raising element within their plans. The e-toll mechanism has been unsuccessful in its quest to achieve the extremely high levels of compliance and revenues required to fund the GFIP capital bonds, and it will remain unsuccessful, even if tasked to collect half the revenue required. Furthermore, the suggestion of additional levies on local vehicle license fees will produce further unintended consequences, one of which will be the loss of vehicle license revenue to the Gauteng Province.

Once again we say, there is an easier way.... by making use of the existing policy of the fuel levy / taxation to fund this part of Sanral's work. We maintain and reiterate that the fuel levy ought to be used to fund the GFIP Bonds and other urban freeway / social infrastructure projects. Attempting to retain the e-tolls scheme, even as a partial funding mechanism, will be a futile waste of resources.

## **In closing**

I would like to thank the OUTA Directors, Committee Members and our consultants for another year of effort and patience in tackling the e-toll matter, all of which appears to have paid off. Looking back over the past year, we are not surprised by the low levels of compliance, despite the relentless marketing drive by Sanral to force the e-toll scheme onto the people of Gauteng.

Our applause also extends to the millions of South Africans for their display of active citizenry and civil courage, by standing strong in their rejection of the e-toll system and in effect, bringing the unjust scheme to its knees. This has been the most successful and justified 'tax revolt' in our new democracy, which we believe, has set the scene for future active citizenry challenges required to hold our Government to account to the people of South Africa. We trust the Minister of Transport will take the necessary action to pull the Sanral Board of Directors into line and ensure that going forward, this State Owned Entity conducts itself in a manner which has at its core, the best interest of the communities which they serve.

**Wayne Duvenage**

**OUTA Chairperson - 09 April 2015**