

OUTA's "RULE OF LAW" campaign

10 July 2014 (Revision 1.2: 21 March 2016)

The Opposition to Urban Tolling Alliance (OUTA) has, since its inception in February 2012, been intent on exposing the unlawfulness of the declaration to introduce the e-toll scheme for the Gauteng Freeway Improvement Project (GFIP).

Whilst we were successful in obtaining the initial interdict which prevented the launch of the scheme in April 2012, our legal challenge was set aside in October 2013 in the Supreme Court of Appeal (SCA), on the grounds that they could not condone the lateness of our application. Nonetheless, the SCA expressly ruled that the lawfulness of the e-toll decision was not decided on and this could only be done so as and when this matter is tried in a criminal or civil case, which is when the lateness technicality will not apply.

OUTA has thus agreed to have the immense evidence it has gathered, to be argued and heard in court, as and when one of its contributing donor members is summonsed, or if in the case that the first or very early summons is issued against a non-contributing OUTA member, this meets with OUTA's Board approval to assist in that; (a) our participation in one (or more) such non-member cases will be good for OUTA's cause and (b), if such a person willingly accepts OUTA's legal assistance and qualifies for our help and participation in this regard.

Our mandate however, comes from the people in the form of donations, which we require to cover the costs of litigation, along with administration and core operational expenses. In this regard, we urge citizens to become a contributing members to OUTA, by joining on-line at <http://www.outa.co.za/site/outa-membership-and-donation/>

The basis of the OUTA **Rule of Law** campaign is provided herewith:

1. If SANRAL and Government wants to toll, or e-toll, it must do so lawfully.
2. The Constitution guarantees the rule of law.
3. The Bill of Rights guarantees the right of every person to be governed in a manner that is lawful, reasonable and procedurally fair.
4. But, as OUTA came to discover through its own investigations and in the later litigation in 2012 and 2013, SANRAL and Government, did not comply with the law or the Constitution when they introduced Gauteng's e-tolling scheme. The toll declarations underlying the e-tolling system in Gauteng are unlawful in that:
 - SANRAL did not conduct a proper public participation process as required by the SANRAL Act before tolling can be introduced. The public were not informed of what SANRAL's plans were, how they would be affected, what it would cost them.
 - The Minister of Transport did not consider the exorbitant cost to be paid by the public of e-toll collection as set out in the application made by SANRAL to him for his approval;
 - Both SANRAL and the Minister of Transport did not properly consider more efficient and inexpensive alternative funding mechanisms;
 - The decision to approve the tolling of Gauteng's freeways was irrational and unreasonable. The cost of E-toll collection is unreasonably high (over 27% of their planned revenue) and the scheme is onerous and burdensome, with flawed

administrative processes which make it impractical and almost impossible to enforce.

5. In addition to the above matters raised during the 2012/13 court process, OUTA has gathered further and extensive input to support its case and legal defense on the matter. Some of these pertain to:-
 - The fact that SANRAL have failed to comply with the Act pertaining to the “Legal Metrology Technical Regulations” and have also not been granted an exemption to this requirement by the National Regulator for Compulsory Specifications. This means that SANRAL’s e-Tolling equipment has not been certified, specified and approved as is required of them by law, during the first two and a half years of operation.
 - There is a court evidence relating to an inquest into the fatal accident involving President Jacob Zuma’s son, Duduzane, which indicated the South African National Roads Agency Limited (Sanral)’s e-tolling system is inconsistent and unreliable.
 - The fact that since the launch of the e-toll scheme, there are thousands of examples of the systems erroneous billing errors which indicate the systems inaccuracies, errors and account reconciliation problems with SANRAL and the systems administrators, have rendered the ability for businesses and the public to manage their accounts as extremely costly, onerous, time consuming and very often impossible to manage.
 - The fact that OUTA’s research suggests that society has been significantly overcharged for the freeway upgrade construction (by at least more than double or approximately R10 billion) is unacceptable to the public. This is further exacerbated by the fact that SANRAL have failed to keep the members of the public abreast with their detailed legal or otherwise action against the collusive construction companies, to claw back the overcharges.
 - That SANRAL failed to apply its own internal and legally required Board approval policies when declaring and approving the e-toll decision.
6. OUTA and its co-applicants have tried to have the toll declarations set aside before e-tolling started, because OUTA believed they are unlawful on these and other grounds as mentioned in point (4) above. These points still apply and will be presented, along with pertinent and specific facts for each case, as and when our members (or the first case) reasons for non-payment is defended in court.
7. While the Supreme Court of Appeal (SCA) decided in October 2013, that it was too late to set the toll declarations aside, as requested by OUTA, the SCA’s rejected OUTA’s application was based on Administrative law and its technical basis of delay, which held that the court was barred from deciding whether e-tolling is unlawful or not at that time.
8. OUTA announced its decision in September 2013 not to appeal the SCA decision, but instead it would rather wait for the moment when the unlawfulness of e-tolling could not be avoided in court for technical reasons under Administrative Legislation. This will now only happen when e-tolling is attempted to be enforced by SANRAL and / or the NPA in court against individuals.
9. That moment is upon us.
10. In March 2016, following two years of threats to issue summons against e-toll defaulters, SANRAL have indicated their intention to launch the first prosecutions of road users who have refused to pay e-toll.
11. OUTA has publicly requested on many occasions, that SANRAL should issue summons against OUTA’s directors, who have publically stated that they are willing to be served with a summons, so as to argue its collateral challenge on the unlawfulness of e-Tolls in court.

12. Despite the fact that SANRAL chosen to ignore OUTA's request, OUTA launched its "RULE OF LAW" campaign in June of 2014 and in light of the moving goalposts and changing environment, have revised this "RULE OF LAW" campaign in mid March 2016, to accommodate the organisation's recently launched "e-Toll Defence Umbrella" (October 2015), to focus its enable it to broaden support to defend not only the first summons case, but also those members of public who have become contributing members to OUTA.
13. In this "Rule of Law" campaign, we aim to assist OUTA's contributing members (individuals and businesses) who are summonsed for prosecution (criminal or civil), and who share OUTA's belief that e-tolling is unlawful in saying to SANRAL and to Government
 - *"If you want to govern us and if you want to toll us, you must do it lawfully."*
 - *"Your decision to e-toll Gauteng's freeways was not lawful. Furthermore, it was not reasonable and it did not respect the rights of the people of South Africa and in Gauteng to be informed of the decision and in a manner that would enable their meaningful participation therein."*
 - *"By proceeding with this irrational e-toll decision which has demonstrated its failure to garner the support of the Gauteng public, prior to and well after it launch, you remain intent on crippling us. And now, by prosecuting us for not complying with a system that is actually unlawful, you are victimising us."*
14. In this campaign we want to help individual citizens to hold SANRAL and Government to the rule of law and the Constitution.
15. In this campaign we also help the people of Gauteng, and South Africa, say to SANRAL and Government "Not again".
 - *"Not again"* refers to the manner in which the e-tolling of the GFIP was slipped past the people of Gauteng by SANRAL, who were not given a meaningful opportunity to speak and participate in the decision that affects so many to such a great extent.
 - *"Not again"* refers to the decision by SANRAL and Government to impose what amounts to a new compulsory tax on its citizens without properly informing those citizens and giving them a proper opportunity to influence the decision, which was rightfully theirs to influence.
 - *"Not again"* refers to the decision by the Minister of Transport on behalf of Government to approve e-tolling without even considering the extent and exorbitance of the cost of toll collection to be paid by the citizens, and other pertinent matters required to be considered in this decision.
16. The RULE OF LAW campaign is not a civil disobedience campaign, although it does support the decision by members of the public who choose to be civilly disobedient against the e-toll scheme, on the basis of its unlawfulness, unreasonableness and irrationality.
17. The purpose of the OUTA's RULE OF LAW campaign, combined with the "OUTA E-Toll Defense Umbrella", is to enable individuals and businesses to resist the enforcement of an e-tolling system against them, one that they believe is unlawful.
18. The Supreme Court of Appeal chose not to enquire into and decide whether the toll declarations, and therefore e-tolling, is lawful or not.
19. That enquiry must now take place in a case when SANRAL and / or the NPA prosecute those individuals who refuse to pay e-tolls.

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