

Presentation to:  
Parliamentary Portfolio Committee  
Transport

The Gauteng E-Toll Issue

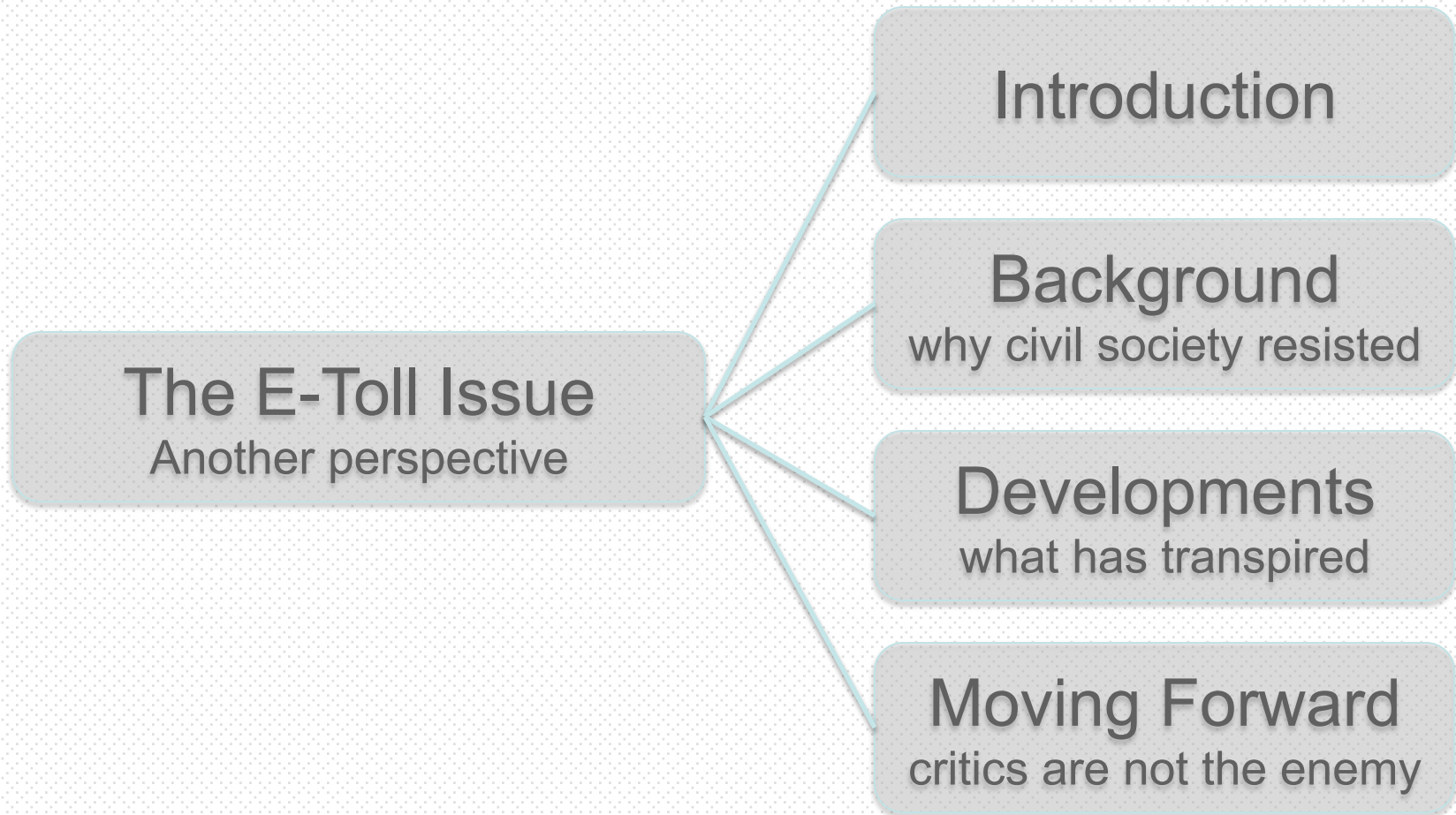
A critical (realistic?) perspective

26 January 2016

presented by  
Wayne Duvenage  
OUTA Chairperson

**OUTA**

# Overview



# An introduction

- OUTA an NPO - Formed March 2012
  - Initially a Business Initiative
  - SAVRALA, RMI, QASA, SATSA, SANCU, Public
  - Government Pressure > Later Public Driven
- We do **not** oppose the need for the public / society to pay for the roads. A fact of life.
- Do do **not** denounce the benefits of ITS / E-Toll technology
- The e-toll's failure: a combination of issues, & poor contextualization of the environment

# BACKGROUND: why OUTA?

- Fleet based industries became meaningfully aware of the e-Toll plan in Q3-2010
- A Year of Engagement: Q4 – 2010 to 2011
  - SAVRALA engaged with SANRAL seeking solutions to numerous challenges
  - COSATU, SACCI, AASA, RFA, BMF, Faith Based Org.
- SANRAL Missed 3 launch dates in 2011.
- Irrationality, poor public engagement & signs of unworkability... a standoff was looming.

# 2011 - CONCERNS EXPOSED:

- **An administratively burdensome scheme**
  - Business systems required changes, high costs of admin.
- **Inefficient & Cumbersome**
  - Poor design- Write-off oldest debt first, despite queries.
  - Dispute resolution impractical. Consumers rights infringed?
  - Scheme relies on erroneous information from eNatis
- **Alternatives congestion easing inadequate**
  - Public transport & alternative routes inadequate
- **Shocking Public Engagement Process**
  - 30 responses to two requests for public input in 2007/8
  - Juxtaposed to 117,000 responses to Gazette in 2015/6
  - Section 195 of Constitution (Basic Values & Principles)?

# Warning signs of failure... ignored

- May 2011: GFIP Steering Committee Report:
  - Warned high public resistance could lead to low compliance.
- Enforcement would be challenging:
  - License Plate cloning would be exacerbated (Metro Police)
  - Traffic fines payment problematic <20%
- SANRAL postponed launch 3 times in 2011
- Regulatory environment was not ready
  - Regulations changed multiple times over past 4-years
  - ..... even today – Jan 2016, is still not ready.
- Probably the best warning came from Min. of Transport (Sbu’Ndebele) in Oct 2011 ....

# Warning signs... Ignored (cont.)

The Minister of Transport - S'bu Ndebele, informed Parliament on 31 October 2011:

(in response to Question 2598 on E-Tolls 8,4:1 benefit to cost ratio and congestion easing claims made by SANRAL and its economists)

*“The key assumption of the 2007 [e-toll] 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. [a phenomenon known as ‘induced congestion’]*

*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’s benefits to road users may, therefore, unfortunately not be forthcoming.”*

# Against this backdrop...

- Public resistance was justified.
- A 'user-pays' scheme with a high % of users not paying, is a serious concern for those paying.
- Continued lack of meaningful engagement-
  - SANRAL's leadership failed to meet with fleet industry leaders
  - Litigation became a necessary last resort
- A legal challenge in early 2012 announced.
- OUTA's formation was justified.
- The scheme's 4<sup>th</sup> launch attempt interdicted.



# 2012/13... more revelations

- The costs of collection not properly considered
  - SANRAL informed Min of Transport R200m/a. Tenders showed 5 x that
- The Fuel Levy never seriously considered.
  - No docs of compelling proof that the fuel levy was considered.
  - Despite the option being available in current government policy
- SANRAL were never ready to launch
  - In Sept 2012, ConCourt set SANRAL free to launch, "in two weeks" SANRAL said, 15 Months later they tried again.
- 2013 President's Committee Review of SOE
  - Recommendation #21: *"Funding of social infrastructure, including roads, should have less reliance on the 'user pays' principle, and more on taxes."*
- SANRAL's strategy of misinformation
  - SANRAL's continuous misinformation (e-Tag uptake – 2013 to 15)
  - ASA Rulings to remove no less than 4 adverts

# The Legal Process .....

## Far from SANRAL's 6 vs 1 Court Win Claims...

- Apr 2012: OUTA Interdicts Launch.
- Sep 2012: SANRAL Appeals & ConCourt Lifts Interdict
- Nov 2012: High Court Rules Against OUTA, with costs
- Oct 2013: SCA overturns costs order and sets aside prior judgement, allowing SANRAL to toll, but leaves open the door for a collateral challenge from society.

REF: (see OUTA's Rule of Law Campaign: [http://www.oua.co.za/site/wp-content/uploads/2014/08/Rule\\_of\\_Law\\_Campaign\\_V7.pdf](http://www.oua.co.za/site/wp-content/uploads/2014/08/Rule_of_Law_Campaign_V7.pdf) )

# The Legal Process (cont.).....

## Other Serious court rulings to note...

- **State vs Smit – Mojapelo Judgement, June 2006.**
  - A strong message to Sanral on the interpretation of meaningful public engagement.
  - Smit was found not guilty in a successful collateral challenge, for failure to obey Section 27(5) of the SANRAL Act, by not paying the toll charges
  - Failure to meaningfully engage is enough reason for the public to refuse to pay tolls – with impunity
- **HMKL3 Inv. vs SANRAL: Judge Bam - Aug 2011**
  - Again, SANRAL lost this case for failing to consult an easily identifiable interested and affected party when declaring certain parts of the N1 as toll roads.

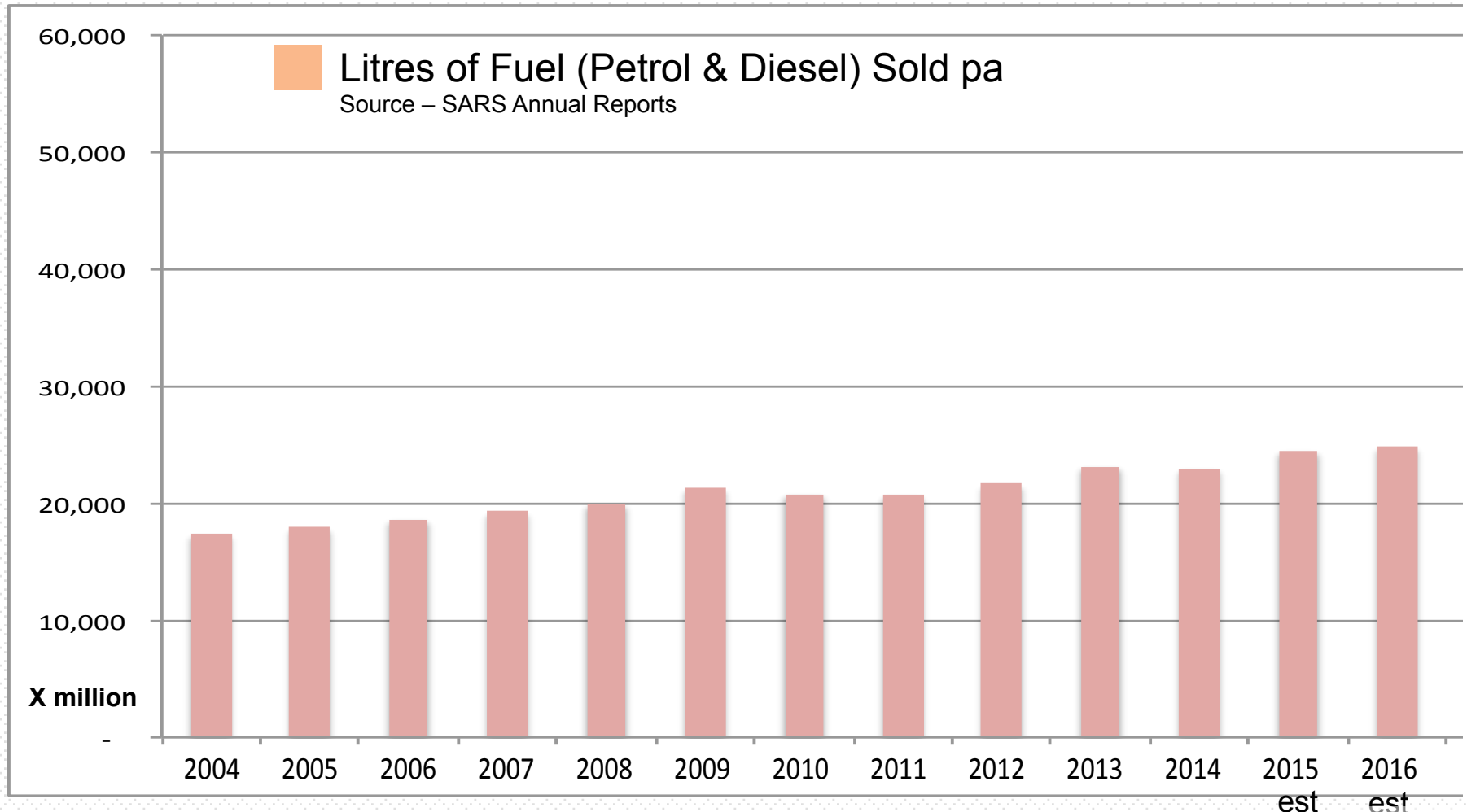
# The Legal Process (cont.).....

## More court rulings & public resistance

- **City of Cape Town 2015...**
  - Public engagement process was not broad enough.
  - Questions arising on unreasonable and excessive toll charges
  - Decision of toll road declaration was not approved by SANRAL board, as is required in SANRAL Act
    - (par.160-177 of Judge Binns-Ward & Bokwana Judgment raises serious questions)  
See next slide.
- **N2 Toll Route KZN / Wild Coast South Coast**
  - 7 Year stand-off with local residents.

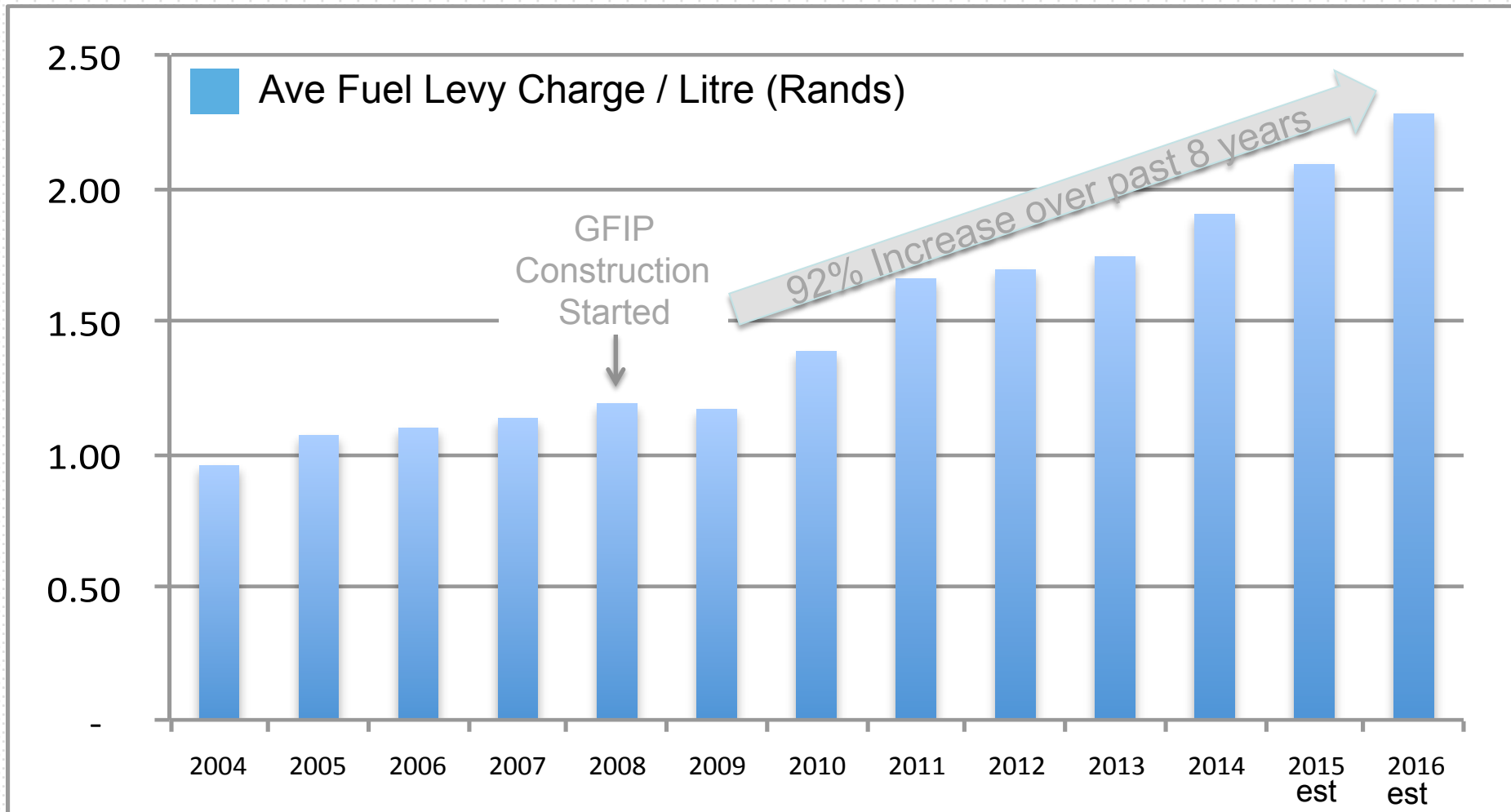
# Why we advocate the Fuel Levy

Graph 1: Fuel Sale Volumes



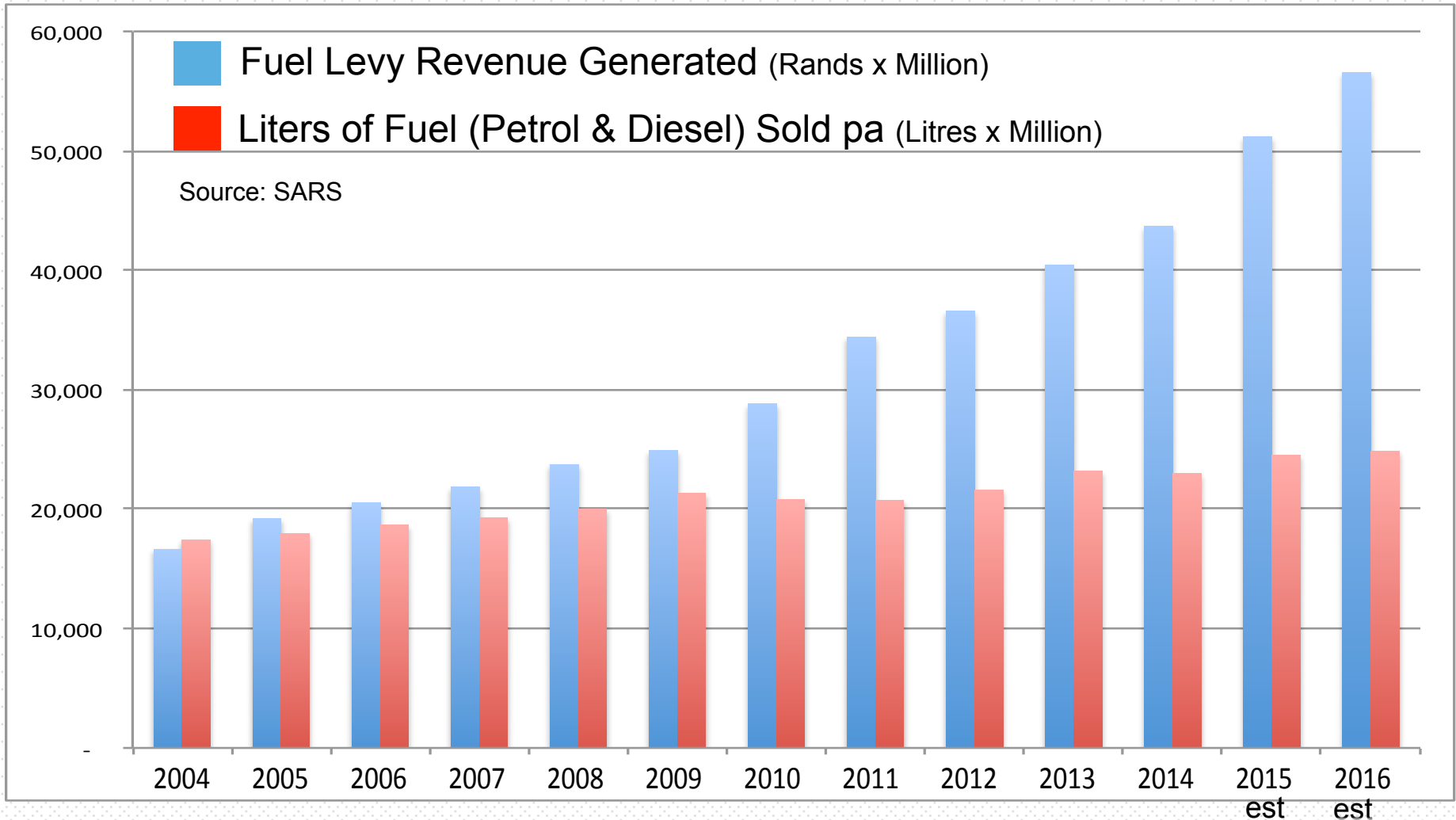
# High Fuel Levy Tariff Increases

Graph 2: Ave Fuel Levy Tariff Applied



# Fuel Levy - Revenue Generated

Graph 3: Fuel Levy Revenue



# The Fuel Levy... makes sense

- It is existing policy: Sanral receives R12,5bn pa
- Gauteng's Freeways benefit the entire nation
- **Zero** administration fees vs. >R1bn /annum
- To argue that fuel levy hurts the poor more, and then to increase the same by 92% in 8 years....?

Hypocrisy

- A R0.09c increase in fuel in 2008 (GFIP build)
  - R17bn (GFIP capital) would have been collected by today.

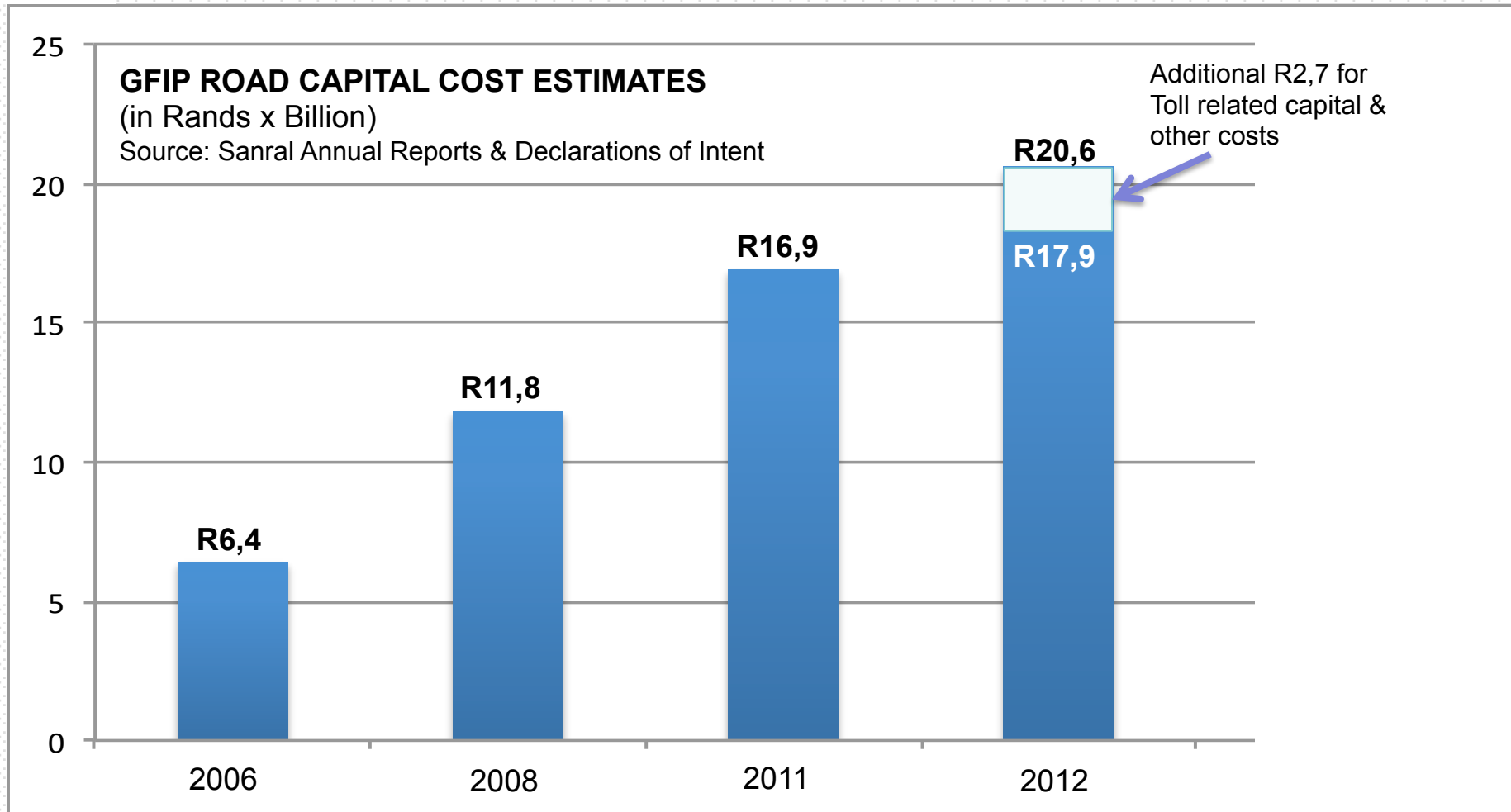


# GFIP COLLUSION: An Odious Debt

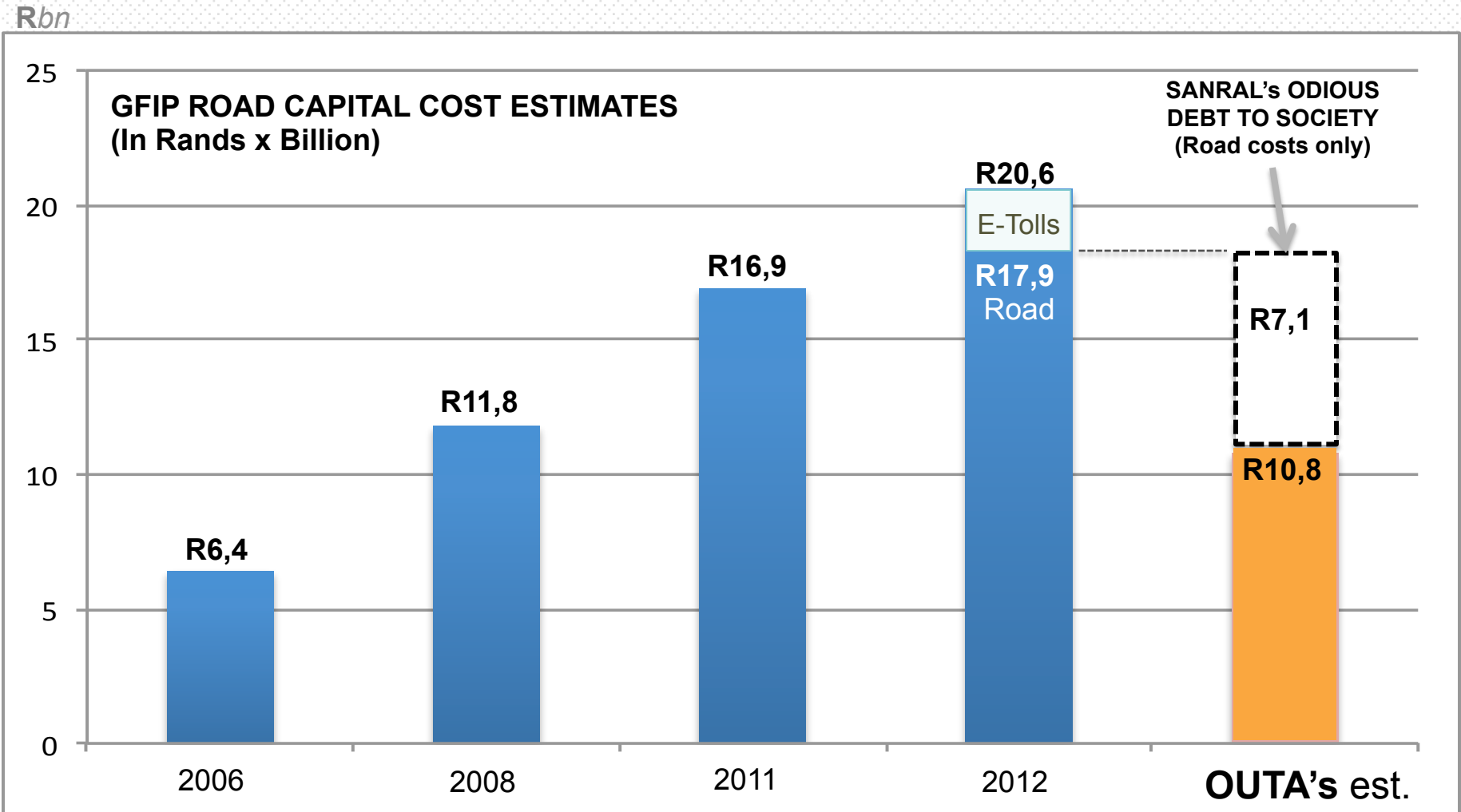
- 2011/12: SANRAL says.....
  - “There is nothing untoward about the construction costs.”
- 2013 Feb: Competition Commission says otherwise:
  - Construction Companies guilty of collusion & fines paid.
- 2014: CC Issues Certificates to Sanral & others to pursue civil claims.
- 2016: Public awaits for clarity of SANRAL’s plans to prosecute & collect overcharges.
  - If debt prescribes, SANRAL faces potential class action.
  - No action gives society more reason to dispute e-Tolls

# What should GFIP have cost?

Rbn

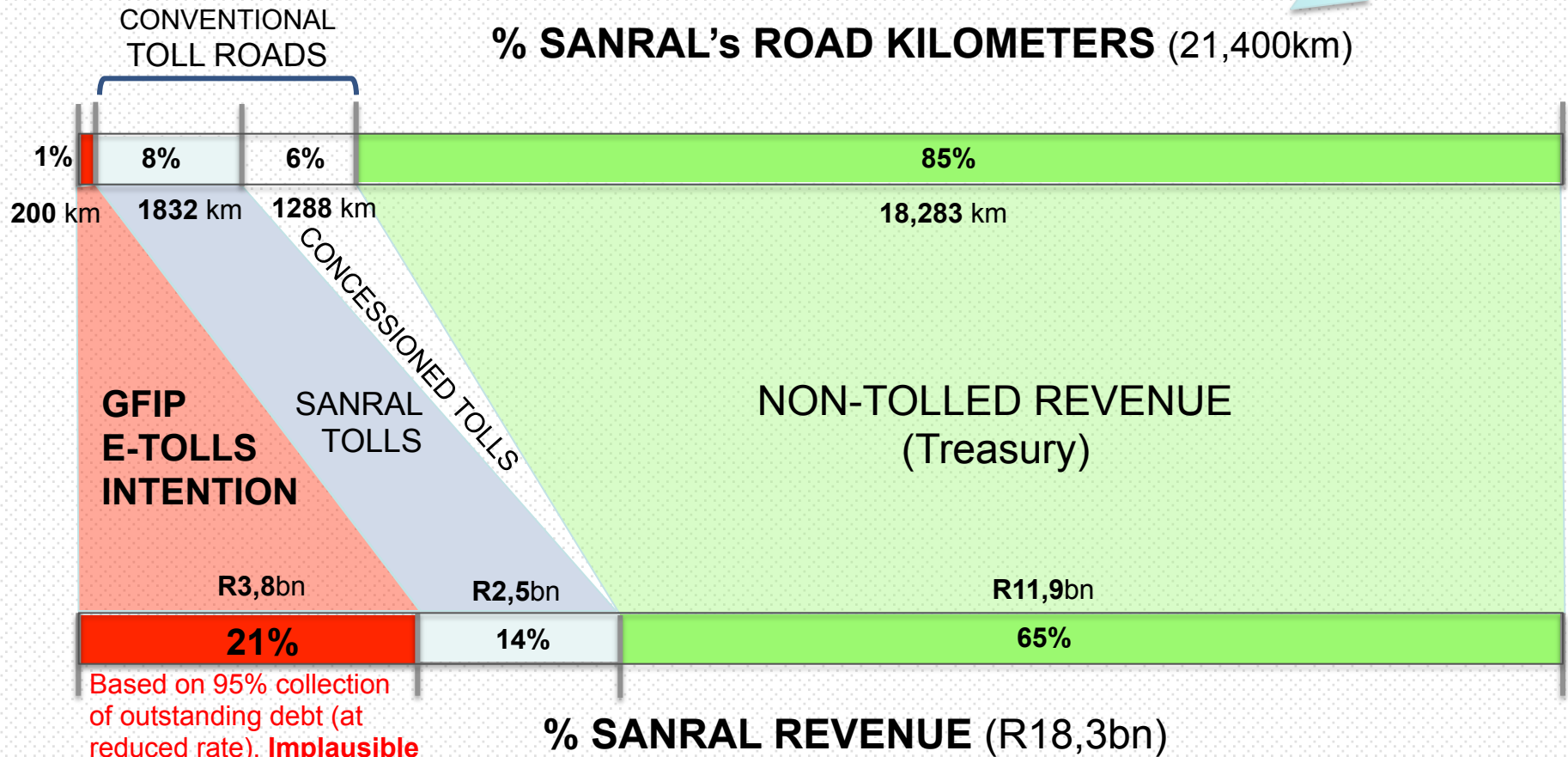


# What should GFIP have cost (Cont.)



# E-Tolls: Extortion of Gauteng Motorists

**Note:** Total Roads in SA: 750,000 km  
 158,000 (or 21%) of which km is paved  
 21,400 km (14% of paved roads) managed by SANRAL



# Questionable claims

- 8,4 : 1 Ratio of Benefit to Cost (Dr R Botha)
- Why doesn't Dr Roeloff Botha or SANRAL measure the facts of their predictions today?
  - Was this return ever really there?
  - And even if so, for how long?
  - Roads as congested today as they were 5 Yrs ago
  - Concept of “Induced Congestion”
- Why did none of the 46,000 exempt Gauteng Taxis fit e-tags?
  - Even when free – the scheme is shunned.

# OUTA's Research: Beyond the Impasse

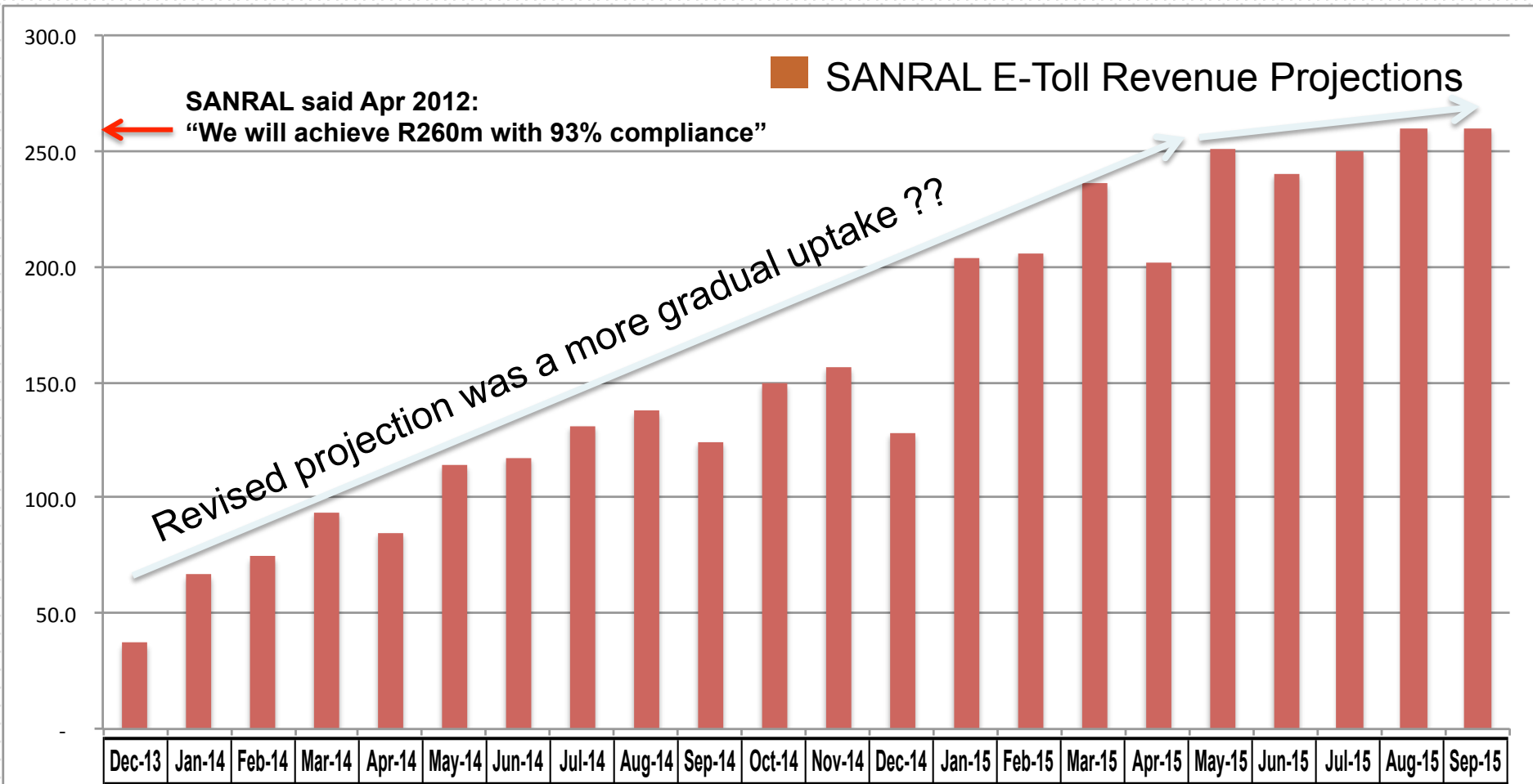
## 8 Critical Factors for E-Toll Success:

- X 1. Extremely high public support with strong advocates of acceptance
- X 2. Oppositional forces must be weak.
- X 3. Tangible comfort factors must be felt & believed, to create confidence.
- X 4. Alternative public transportation systems: adequate and reliable.
- X 5. Simple pricing systems and a user friendly billing system.
- X 6. Extreme reliability of the data & soundness of technology.
- X 7. Environmental benefits and costs must be monitored and managed.
- ? 8. A single agency with unquestioned legitimacy and authority should be responsible for implementation.

Virtually all of these have been lacking on the e-Toll matter

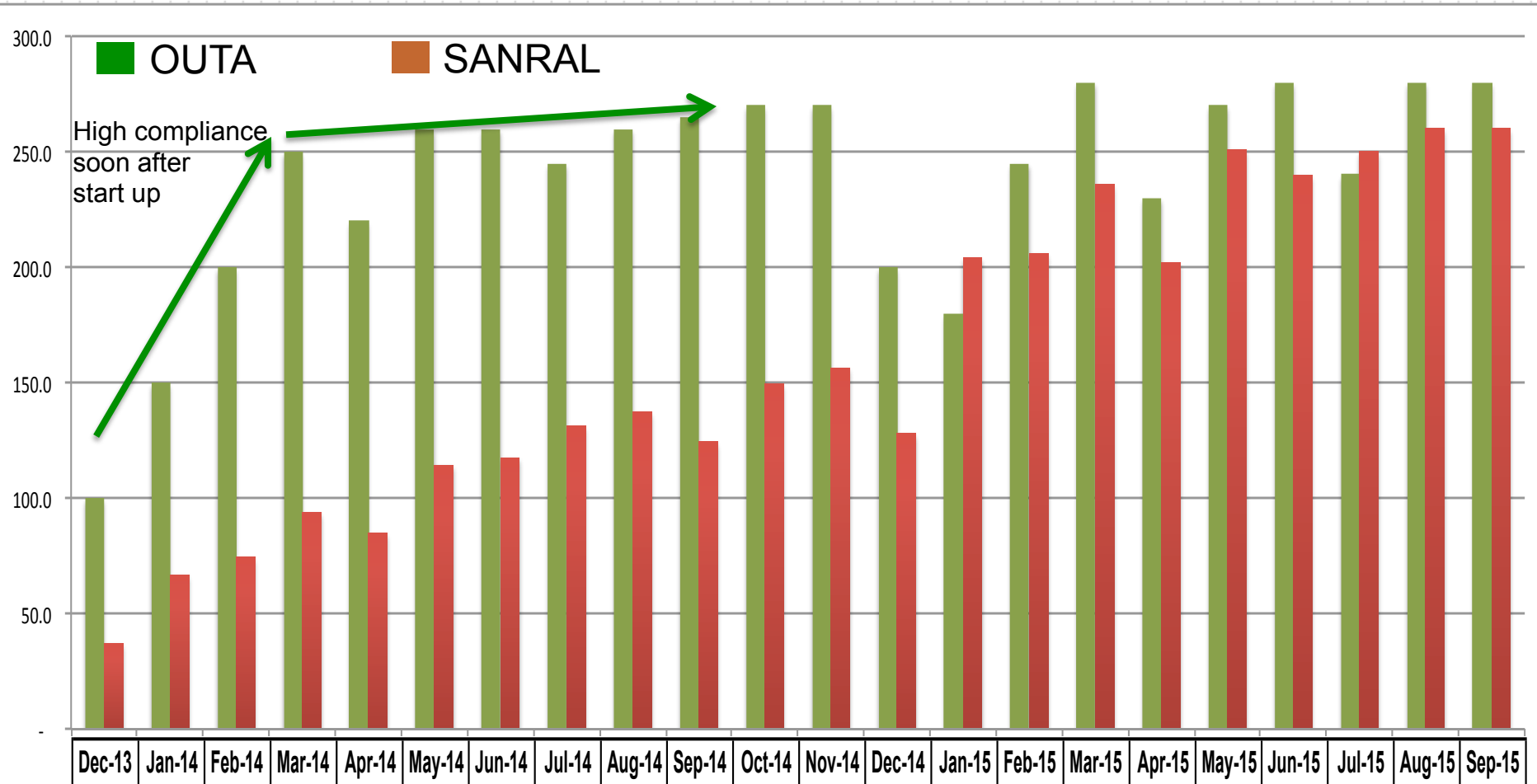
# SANRAL's E-Toll Rev Projections

## Monthly E-Toll Revenue Projections (Rands x Million)



# OUTA's opinion... for e-toll success

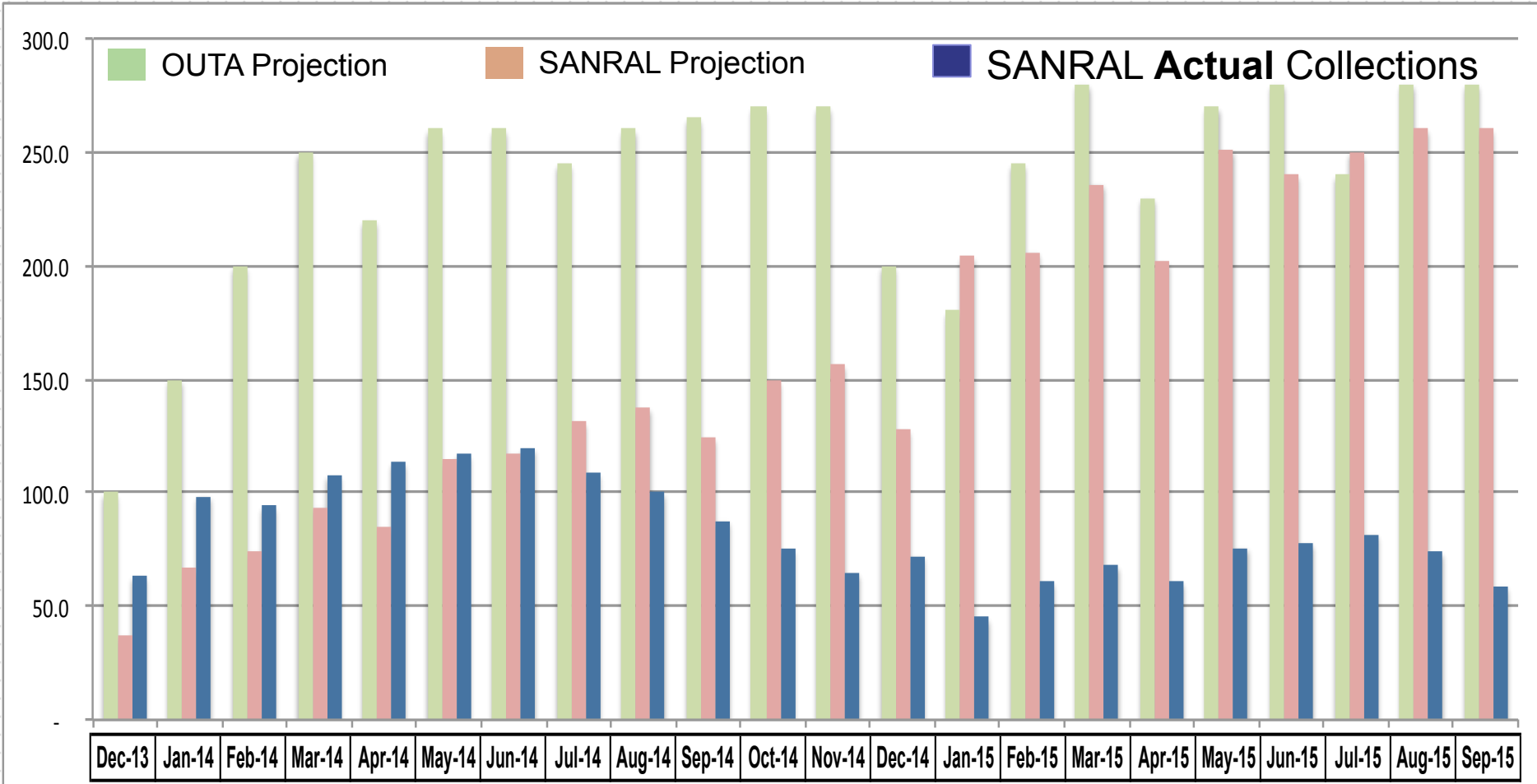
## Monthly E-Toll Revenue Projections (Rands x Million)





# SANRAL's Actual Achievement

Monthly E-Toll Revenue Collected (Rands x Million)



# So What Happened?

- Public Resistance was extremely high
- Compliance maxed out at 40% (Mid 2014)
  - Under duress & unsustainable
  - Threats of prosecution and criminal records
- Today – Less than 10% Compliance
- New Dispensation: A Carrot & Stick approach
  - Carrot (60% discount on outstanding debt): 2 to 3% uptake in first two (of six) months.
  - Stick (license renewal implications): An invitation for public resistance into another area of governance - unwise.

# ....the State has suffered

- A crisis of legitimacy has ensued.
  - The State is unable to enforce its own laws.
- Further alienating the people from the state.
- SANRAL suffered rating downgrades
  - Bond auctions deserted
  - ...and mounting debt.
- Over R30m spent on e-Tolls litigation
- Another est. R120mil wasted on marketing

# Enforcement of e-Tolls using Aarto – Futile and dangerous

- Vehicle Licensing – A just and accepted tax
- Aarto – designed to drive road safety – Workable but with challenges.
- To labour a just tax scheme (vehicle licensing) with e-toll enforcement, will harm and delegitimise Aarto & the vehicle license system.
- Will be subjected to significant legal scrutiny
- More concerning – will invite an extension of the e-Toll tax revolt into vehicle licensing.

# The Reality Is.....

- An unpopular and unworkable policy cannot be salvaged or made workable by legislation.
- The state must ensure fairness and obtain public acceptance for the scheme to be civilly compliant.
- An inability to manage & enforce, renders the scheme and its laws ineffectual.
- The states critics are not the enemy.

# The Way Forward....

- There is a saying; *“when your in a hole... stop digging”*
- Halt the e-Toll scheme. It’s not too late to stop
- Ongoing threats & intimidation (such as withhold vehicle licenses) are not working.
- Continuous regulatory revisions have complicated the regulatory framework.
- It is possible to negotiate exit strategy for the e-Toll contracts (5-year term end is not far off)
- Move forward, together, by working with society to find the solutions.

THANK  
YOU

**OUTA**