



YEARS OF ACTIVISM OPPOSING E-TOLLS

OUTA's longest campaign, crowd-funded by
thousands of supporters

By the Organisation Undoing Tax Abuse
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OUTA: 10 years of activism opposing e-tolls

After a decade of defiance, seven transport ministers and R10 billion in uncollectable debt, government finally announced in October 2022 that the Gauteng e-tolls were over. The widespread opposition to e-tolls to fund the Gauteng Freeway Improvement Project (GFIP) upgrades was an example of how united action can change government policy, and a harsh and expensive lesson to government that genuine public participation and fairness is essential when public buy-in is needed on policy.

The e-tolls were ended in Finance Minister Enoch Godongwana's Medium-Term Budget Policy Statement (MTBPS) 2022, which included two bailouts together worth R27.476 billion for the state-owned South African National Roads Agency Ltd (Sanral) during 2022/23. The Minister said national government would fund 70% of Sanral debt and the Gauteng government would fund the remaining 30% plus the ongoing GFIP maintenance.

The Opposition to Urban Tolling Alliance (OUTA) was established in March 2012 to oppose the implementation of e-tolls on Gauteng freeways. In February 2016, OUTA's name was changed to the Organisation Undoing Tax Abuse, with the same acronym, and its mandate expanded to tackle government corruption and maladministration while still continuing to oppose e-tolls.

Shutting down the e-tolls was a battle fought through courts, through official inquiries, across social media, in protests on bridges and outside government offices, through millions of unpaid charges and thousands of summonses for debt, in the media and in Parliament, in debates about affordability, fairness and corruption, and ultimately won on 186 km of Gauteng commuter freeways by the united action of hundreds of thousands of defiant motorists who refused to pay.

It was the conflict that seven ministers of transport, a trail of finance ministers and three presidents were unable to resolve.

It has been a harsh lesson for government that public participation must take public inputs seriously if policies and laws are to be respected.

For the Organisation Undoing Tax Abuse (OUTA), it was our biggest, longest campaign that ran for 10 years, crowd-funded by thousands of supporters.

"This is a massive victory for civil society, and OUTA thanks each and every person who stood up against this irrational scheme," says Wayne Duvenage, OUTA CEO, who pioneered OUTA's strategy and has been the voice of e-toll opposition for a decade.

"This victory is a significant message to government never to ignore the voice and the power of the people. We thank thousands of motorists for standing their ground alongside OUTA's collateral challenge in the court cases, and remained steadfast on this matter. This battle was not an easy one, with the onslaught of government propaganda, expensive court challenges, excessive bullying and coercive campaigns. The scheme had all the signs of failure long before it was launched in December 2013, yet government proceeded without listening to its citizens."

The way ahead: The legal position

Ending the e-tolls has two aspects: establishing the alternative funding solution for the GFIP, and the legal dismantling of the e-tolls.

MTBPS 2022 set up the alternative funding. Now the Minister of Transport, Fikile Mbalula, must announce the way forward to remove the e-tolls and legalise the situation for road users. OUTA believes that Sanral must now retract the notices which declared the GFIP roads as toll routes, which enabled tolls to be charged. This is Sanral's responsibility, in consultation with the minister.

As far as OUTA is concerned, those who didn't pay e-tolls no longer have to pay any outstanding bills.

In court: OUTA's E-toll Defence Umbrella cases

In 2015, OUTA set up the E-toll Defence Umbrella, to arrange crowd-funded legal defence of those summonsed by Sanral for failing to pay e-toll debts.

OUTA's lawyers are currently representing motorists in 2 028 cases in which Sanral has issued summonses. In each case, OUTA's lawyers filed notice of intention to defend, which prevented Sanral from obtaining default judgments.

We are continuing this defence until these matters are formally removed from the court rolls.

The basis for this defence arose from the October 2013 judgment by the Supreme Court of Appeal in OUTA's case challenging e-tolls which, although ruling that Sanral could continue the e-toll scheme, made it clear that a defensive challenge could be raised against Sanral if it acted against e-toll defaulters. OUTA's defence has two parts: firstly, there is a challenge to the constitutionality of the e-tolls themselves (called the collateral challenge) and, secondly, the merits of each individual case are tested. The collateral challenge was due to be heard first, based on a test case.

Neither the collateral challenge nor any of the individual cases has yet been heard, as Sanral has delayed the matters.

OUTA's E-TOLL CASES AGAINST SANRAL		
Number of matter defended by OUTA's attorneys as at 28 February 2023		Rand value of the claims in these cases
High court cases	99	R152.784 million
Magistrate's court cases	1 929	R112.276 million
Total	2 028	R265.060 million

The test case was to be the Sanral action in the Pretoria High Court against Thandanani Truckers and Hauliers and 10 other transport companies and individuals. However, in March 2019 the Sanral board decided it would no longer pursue motorists with outstanding e-toll debt, including historic debt and summonses it had issued, and no new summonses would be issued. All the cases OUTA is defending have been on hold since then.

Sanral issued the summonses against the alleged defaulters, so Sanral will have to withdraw the summonses and the cases. Normally a litigant withdrawing a case, particularly after so long, would be expected to pay the legal costs of the opposing party.

It cost OUTA a lot of time and money to defend these cases, and we would not have been able to do it without our contributing supporters.

The OUTA court cases

In February 2019, OUTA estimated that our lawyers had, since the organisation started, filed about 135 000 pages of legal documents over the years across many courts in the e-toll cases against Sanral. We stopped counting after that.

Only 17% of e-tolls are paid

Sanral's Integrated Report 2022 notes that the collection rate is about 17%. This is the percentage of the total money collected, not of the total number of users.

The money: The GFIP upgrade costs, the debt and the bailouts

In February 2008, the Budget Review estimated the GFIP upgrade would cost R14.3 billion. Two years later the Budget Review estimated R22.0 billion. In 2011, Parliament was **told** the cost was R25.9 billion including VAT.

In May 2012, Sanral CEO Nazir Alli told the Constitutional Court in an affidavit that the road upgrade cost was R20.63 billion, but adding the collection costs, operating costs and interest payments would take spending to **R89.722 billion** over 24 years. This was Alli's calculation:

- Road upgrade: R20.630 billion (23% of total)
- Road maintenance: R10.670 billion (12%)
- Violation Processing Centre (VPC) operations R6.194 billion (7%)
- Toll-related operations (excluding VPC) R12.170 billion (13%)
- Other operational expenses R1.727 billion (2%)
- Interest payments R38.331 billion (43%)

OUTA has always maintained that the initial cost of the upgrade itself was overpriced.

After the October 2022 announcement of the end of e-tolls, the finances remained unclear.¹

In March 2022, the total Sanral debt was R49.597 billion.

In October 2022, Treasury said the total GFIP debt was R43 billion (part of the total Sanral debt), but failed to explain how this was calculated.

From 2011/12 to 2022/23 (excluding the MTBPS 2022 bailouts), government made transfers to Sanral specifically for the GFIP totalling R26.313 billion (R24.112 billion after Sanral paid VAT on it). Including the MTBPS 2022 bailouts takes the total to R53.789 billion (R46.840 billion after VAT). Were these transfers paid towards the GFIP debt and how did it affect the debt? If not, what were these funds spent on? By the end of February 2023, there was still no clarity from government.

¹ OUTA. 18 November 2022. *Comment on MTBPS 2022: OUTA's submission to the Standing and Select Committees on Appropriations*. Available online here: <https://www.oua.co.za/web/content/233420>

10 YEARS OF OPPOSITION: An e-tolls chronology

December 2006: The state-owned South African National Roads Agency Ltd (Sanral) issued the first contracts to design the upgrades for the Gauteng Freeway Improvement Project (GFIP). Work started in October 2007 and four days later Sanral gazetted notices of intention to declare the roads as toll roads, giving one month for public comment.

February 2008: Cabinet approved the GFIP roads upgrade at a cost of R23 billion. The same month, the national Budget estimated the first phase would cost R14.3 billion (this is the only phase that was ultimately built).

March 2008: The GFIP roads were declared as toll roads.

May 2008: Sanral awarded seven contracts for the 126km of the first phase of the upgrade, for a total of R11.5 billion. A month later the total was given as R15 billion excluding VAT.

April 2009: Sanral invited bids for the open-road tolling system (the e-toll collection system).

September 2009: Sanral awarded the collection contract to the Electronic Toll Collection (ETC) joint venture for R1.6 billion (made up of the Austrian business Kapsch TrafficCom AG and local partner TMT Services and Supplies (Pty) Ltd. Work started on building the gantries, which were supposed to be switched on in April 2011. Years later, the Gauteng Advisory Panel was told that the ETC contract was R6.22 billion. This was a separate cost, in addition to the upgrade cost.

February 2010: The national Budget said the GFIP total project cost was expected to be R22 billion, for phases 1, 2 and 3.

February 2011: The e-toll fees were announced as 66c per kilometre for cars, with prices at the tolling points ranging from R3.43 to R9.24 for cars and from R20.58 to R55.44 for heavy trucks.

April 2011: The start of e-tolls was postponed due to public opposition.

May 2011: The Star reported that Sanral said the cost of the ETC collection contract was R6.22 billion over eight years, excluding VAT, but that a copy of the ETC tender offer showed that the bid was R9.9 billion.

August 2011: The Minister of Transport told Parliament the upgrade cost was R22.7 billion excluding VAT or R25.6 billion inclusive.

March 2012: The Opposition to Urban Tolling Alliance (OUTA) was formed and filed legal action to stop the e-tolls.

April 2012: The National Treasury said Sanral's GFIP debt was R20 billion, and gave Sanral its first GFIP bailout of R5.75 billion.

April 2012: OUTA won an interim interdict blocking the e-toll switch on.

May 2012: Sanral CEO Nazir Alli said in an affidavit in the Concourt that the GFIP would cost R89.722 billion over 24 years: R20.630 billion for the upgrade (23% of total); R10.670 billion for road maintenance (12%); R6.194 billion to run the Violation Processing Centre (7%); R12.170 billion for toll-related operating expenditure (13%); R1.727 billion for other operating expenses (2%); and R38.331 billion in interest payments (43%). OUTA notes that paying off R89.722 billion over 24 years would mean collecting an average of R10.242 million every day or about R307 million a month.

September 2012: The Concourt overturned the interim interdict blocking the e-tolls.

December 2012: The Pretoria High Court dismissed OUTA's application to declare the e-tolls illegal and, in October 2013, OUTA's appeal against the high court decision was dismissed by the Supreme Court of Appeal.

3 December 2013: The gantries were switched on and the ETC collections contract started running for eight years. Sanral had bought 2 107 000 e-toll tags, but a month earlier still had 1 427 900 unsold. In the first six months of e-toll operations, there were 1 134 834 users on the roads, with non-registered users owing R156 623 567 for more than 90 days.

February 2014: OUTA publishes a report on e-tolls, *E-tolls at an impasse: Transcending the mess in Gauteng* (see [here](#)).

2014: Sanral laid charges with the Hawks in connection with overcharging by construction companies. We never heard the result.

May 2015: Deputy President Cyril Ramaphosa announced that e-tolls would be reduced, with a monthly cap of R225 a month for cars, a discount of 60% on outstanding fees and no charges for less than 30 gantry passes a year. The revenue shortfall of about R390 million a year would be subsidised by government.

October 2015: OUTA launched the E-tolls Defence Umbrella to defend defaulters summonsed by Sanral for debt.

April 2016: Sanral hires external debt-collection agencies who issue thousands of summonses for e-toll debt.

August 2016: Collections company ETC became wholly owned by Austrian company Kapsch.

May 2017: OUTA served Sanral with responding pleas to summonses against e-toll defaulter Thandanani Truckers and Hauliers, the start of defending defaulters.

June 2017: Only 29% of e-toll bills were being paid.

March 2019: Sanral stopped issuing summonses for e-toll debt.

July 2019: Cabinet tells Transport Minister Fikile Mbalula, Finance Minister Tito Mboweni and Gauteng Premier David Makhura to find a solution to the e-tolls impasse.

November 2020: Minister Mbalula signed his performance agreement with President Ramaphosa that requires him to collect on e-tolls.

March 2021: OUTA reported on corruption allegations linked to the awarding of the collections contract to ETC, based on information from a whistleblower. There was no indication of any action by Sanral.

December 2021: The ETC collections contract had run for the maximum of eight years. Sanral, still waiting for a funding solution from government, rolled the contract over regardless of the legality.

March 2022: Minister Mbalula told Parliament his ministry paid R47 500 in e-toll fees from May 2019 to October 2021 for the official vehicles for himself and the deputy minister.

March 2022: Sanral's annual report notes that just 17% of e-tolls are paid.

October 2022: Minister of Finance Enoch Godongwana announces the end of e-tolls and alternative funding from the fiscus for the GFIP.

Organisation Undoing Tax Abuse

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