

OUTA

ORGANISATION UNDOING TAX ABUSE

Email: rudie.heyneke@outa.co.za

Website: www.outa.co.za

The e-tolls: A story of failure



**The Gauteng Freeway Improvement Project
and the e-tolls
13 July 2018**

Gauteng Freeway Improvement Project's e-tolls:

A story of failure

Contents

1. The summary.....	2
2. The background.....	2
3. The current legal dispute	5
The summonses	5
The SMS notifications	6
The test case.....	7
The individual merits	9
Prescription.....	10
Criminal offences.....	11
4. The finances	11
The spiralling cost.....	12
The collection agency	15
The e-toll collections	16
Collection costs.....	16
Legal costs.....	17
Impaired debt	18
5. The political solution	19
6. The way forward	22

1. The summary

Work started on the Gauteng Freeway Improvement Project (GFIP) in July 2008 and a decade later SANRAL is still digging, not on the freeways but deeper into the financial hole of the failed e-toll scheme.

SANRAL is unable to meet its GFIP payment obligations for two reasons: the entity massively overspent on the project and motorists refuse to pay.

The GFIP costs ballooned from the promised R14.3 billion for Phase I as part of a total of R22.0 billion for both Phase I and Phase II, to a cost of R20 billion for Phase I alone. This is not the full cost: adding on the collection costs and the interest payments takes the full cost to R89.722 billion over 24 years.

The enormous public resistance to the scheme has left SANRAL effectively paying more to collect the GFIP e-tolls than it receives in toll revenue. During 2017/18, SANRAL's contractor counted e-toll transactions worth R2.770 billion but collected only R725.82 million of this. For the same period SANRAL paid the toll operator R643 million, which left SANRAL with e-toll revenue of just R82.92 million.¹ The costs of the ongoing legal action against defaulters are not included, so the situation is likely even worse. Assuming a billing rate of R2.770 billion and SANRAL's own claim of 29% compliance, SANRAL is losing R5.3 million in unpaid e-toll bills every day.

This is a failed scheme and should be cancelled in favour of finding a more realistic method of funding the GFIP debt.

2. The background

The e-tolls were approved by Cabinet in 2007 and the toll collection contract signed in 2009².

¹ Parliamentary reply RNW1524 published on 4 June 2018

² Parliamentary replies RNW883 published 25 April 2016 and RNW2767 published 19 September 2017

It has been national policy under six Ministers of Transport, none of whom could resolve the GFIP's financial woes.³

After several years of delays and court challenges President Jacob Zuma signed the Transport Laws and Related Matters Amendment Act of 2013 into law on 21 September 2013⁴, allowing the tolling on the GFIP, and the e-tolls went live at midnight on 3 December 2013.

By November 2017, then Minister of Transport Joe Maswanganyi said “there are 1.4 million tagged vehicles who are using GFIP”.⁵

From the start, Gauteng motorists were bullied by Government to register and pay for this expensive and irrational scheme, for example, when then Minister of Transport Dipuo Peters announced that motorists who did not register with SANRAL would pay almost double the amount per kilometre than those who did.

In 2013, the claims made by SANRAL included that:

- SANRAL needed to collect e-tolls to repay the debt incurred when the roads were upgraded because the entity could not afford further downgrades by international credit rating institutions;
- Three-lane roads had been expanded to five and six lane roads;
- The e-tolling system would contribute to the fight against vehicle cloning;
- Government had made several concessions to minimise the financial burden on the users of the GFIP network, with tariffs reduced and registered public transport exempted;
- Tolling would bring benefits such as job creation and infrastructural investment and would not hurt the poor; and
- The highest income quintile would pay 94% of e-tolls for passenger cars.

The following concerns were raised by the public in 2013:

³ Jeff Radebe, 29 April 2004 - 9 May 2009; S'bu Ndebele, 10 May 2009 - 11 June 2012; Ben Martins, 12 June 2012 – 8 July 2014; Dipuo Peters, 9 July 2014 – 29 March 2017; Joe Maswanganyi, 30 March 2017 – 25 February 2018; Blade Nzimande, from 26 February 2018.

⁴ Government Gazette no. 36878 of 26 September 2013

⁵ Oral reply to Question 338, recorded in Hansard, 29 November 2017

- The addition of e-tolls to the cost of doing business would hurt everybody as this would push up prices of everything transported on the highways, including food, which substantially affects the poor;
- The local roads would suffer as many motorists – including trucks – would use municipal roads as the only alternative to the freeway, increasing congestion and maintenance costs;
- There is no public transport alternative, as not enough attention has been paid to convenient, fast and cheap public transport in Gauteng;
- The e-tolls were pushed through without effective public consultation;
- The e-tolling system is expensive and complicated, with the R14 billion collection system costing almost as much as the highways, and there is the potential for billing problems;
- There is insufficient transparency in the scheme, as much information on costs is still secret, including the terms of the controversial e-tolling contract with a foreign company; and
- The collection costs are excessive.

OUTA opposed the e-tolls for several reasons, including that:

- The tolling of the Gauteng freeways is irrational and unreasonable;
- Gauteng's freeways are not new routes;
- The decision to implement e-tolls was based on poor planning and incorrect information;
- There are no viable alternative routes;
- The "User-Pay Principle" as argued by Government is flawed;
- In the e-toll model, not all users will pay;
- Capping the monthly bills undermines the user-pays argument;
- Non-compliance of more than 50% is expected, but the scheme requires at least 90% compliance to succeed;
- There has been a lack of consultation and transparency in implementing the scheme;
- Alternative models of funding are available, such as through the existing tax revenue collected by the National Treasury, long-distance tolling and the fuel levy.

In 2013 the general fuel levy was R2.125 per litre. By April 2018, only five years later, the general fuel levy increased to R3.37, an increase of R1.245 per litre of fuel (59%). In 2014 Gauteng province proposed that the fuel levy increase to replace-tolls but this was rejected by the other provinces.

3. The current legal dispute

SANRAL is taking legal action which is aimed at recovering unpaid e-toll debts from defaulting motorists. OUTA created an E-Toll Defence Umbrella in support of motorists who contacted the organisation for legal assistance. These cases are not expected to come before the courts until 2019 at the earliest.

By early July 2018, OUTA had been approached for help with 875 cases in the magistrate's courts and another 80 in the high court, for a total value of about R112 million. The biggest claim is about R20 million, the smallest for about R1 200.

The summonses

In March 2016 SANRAL and/or its e-tolls operator Electronic Toll Collections (ETC) started issuing civil summonses for debt against motorists with outstanding e-toll bills.⁶ According to a parliamentary reply by Minister Peters, a total of 6 286 summonses were issued, 5 449 to individuals and 837 to businesses. The amounts ranging from R204.75 to R10.5 million.⁷

In September/October 2017, SANRAL/ETC started issuing a new round of summonses again. In early July 2018, ETC CEO Coenie Vermaak said that 8 000 summonses had been issued in pursuit of outstanding debt.⁸

It is difficult to understand why SANRAL, with a head office in Pretoria, appointed attorneys with offices in Durban to draft and issue summonses in the magistrate's courts to defendants predominantly residing in Gauteng. It is even more peculiar why an attorneys firm from Cape Town was appointed to draft and issue high court summonses in the Pretoria High Court. In

⁶ SANRAL media release, 21 March 2016

⁷ RNW1364 published on 23 May 2016

⁸ ETC CEO Coenie Vermaak, quoted by Engineering News, 10 July 2018

99% of the matters both attorneys' firms had to appoint other attorneys as correspondents to abide by the court rules of having a service address within 15km of the court house. This decision of SANRAL must have increased its legal bills by hundreds of thousands of rand. It is uncertain if these law firms are on SANRAL's legal panel or if this legal work went out on tender. Either way, SANRAL's choice of attorneys escalated the costs of this litigation.

The SMS notifications

SANRAL embarked on a cellphone text message campaign in which members of the public were notified that they have overdue e-toll accounts and must contact SANRAL to avoid legal action. OUTA received reports that these messages have been received by people who do not own a vehicle. During this time, a whistleblower told OUTA that SANRAL had access to a credit bureau database, so it seems that SANRAL is using information from this data base to send out text messages to anyone.

Here are some of the comments OUTA received through e-mail and social media:

- "Hi OUTA – herewith the SMS from SANRAL. I haven't been in JHB for the past four years – and bought my present vehicle in 2015. I do not recall receiving any accounts from SANRAL for my previous vehicle but if there were any amounts due it would have transpired in the absence of any invoice or subsequent statement. It is my educated guess that they are using a random data list as I have heard many others saying exactly the same."
- "I haven't been in Gauteng for 4 years. My car is three years old. I received the first SMS Jan this year... I think they are using a general data list hoping to get a hit anywhere."
- "I have been getting them regularly, and I live in the Free State, 350kms from Joburg, AND don't have any vehicle registered in my, or my wife's name."
- "My husband has been dead for almost 3 years and despite sending his death certificate they still tell me they are taking legal action against him."
- "I received an SMS telling me I have outstanding amounts last year even though my tag has constantly been paid up since the beginning. I went to one of the etag offices and was told that I do not owe anything. Got another SMS this year and when I went an office I got told there are VPC claims from 2015 (which is before I owned the car

the VPCs are for). When I logged in to the VPC myself there was no outstanding amount. I have now given up on SANRAL.”

The test case

OUTA and SANRAL are getting closer to fighting a “test case” in the Pretoria High Court, but there is no agreement on this yet.

For months the OUTA and SANRAL legal teams have been in talks to bring before court a test case aimed at covering all possible issues in dispute. This includes issues like dealing with defaulters who are registered with SANRAL, those who are not, and those who registered but stopped paying.

There are two elements to OUTA’s assistance to these defendants. Firstly, there are the merits of each case. Every case is different and the merits of each case may have to be tested. This means checking whether the bills were sent to the right address, if they apply to the correct registration plate, whether the correct tariffs were applied, if there are photographs for each violation and whether these are for the correct vehicle, whether the bills are for the correct vehicle and whether the claims have prescribed.

Secondly, and more importantly, there’s the “collateral challenge”, which is the overall legal challenge related to the constitutionality of the e-toll scheme itself. OUTA is assisting the motorists to have this challenge heard prior to the merits of each specific case. Should a challenge on the unconstitutionality of the introduction of e-tolls be won, the entire e-toll scheme falls. OUTA believes there is a strong case; however, this takes time due to the number of cases and the amount of paperwork involved.

It is likely that the issues (merits and constitutionality) will be separated, so that the issues of the lawfulness of the scheme may be argued before the merits of each case.

While no court date has been set for this – and it is not expected to get into court this year – a judge has been appointed to oversee the case management.

OUTA wants to use a range of cases combined for the test case, to cover a range of issues, while SANRAL wants to focus on a single case. An interlocutory action is likely to be brought

by OUTA's legal team to decide this. In addition, some of the cases in the magistrate's court may have to be transferred to the high court.

The first plea was filed in May 2017 and include an argument on the unconstitutionality of the laws. Amongst other things, OUTA is arguing that:

- SANRAL's declarations of the Gauteng freeways as toll roads are invalid as they don't comply with public information and consultation requirements in the SANRAL Act and the Promotion of Administrative Justice Act;
- SANRAL's toll declarations are against the constitution which requires "Supremacy of the constitution and the rule of law";
- SANRAL's notices of intention to toll were materially inadequate and flawed;
- There was insufficient notification and time for the public to comment during the public engagement exercise and SANRAL didn't properly consider the few comments that were made;
- The Minister of Transport's approval of the tolling is unlawful and invalid as these decisions were irrational and he did not sufficiently consider the costs, any alternative means of funding the roads, alternative routes for motorists or the impossibility of enforcing open road tolling;
- The SANRAL board failed to approve the tolling before the declarations were issued and failed to consider alternative funding, excluded the fuel levy as a means of funding, failed to consider whether it was practical to enforce open road tolling, failed to consider alternative routes, failed to consider the costs of the toll operations and failed to consider the substance of public representations;
- Both the Minister and the SANRAL board abdicated their decision-making powers by considering themselves bound by Cabinet's decision in 2007 to toll Gauteng freeways;
- The environmental authorisation is invalid as it was not correctly processed by the Minister of Environmental Affairs;

- SANRAL didn't follow the legal requirements for delivering the invoices for the e-toll fees owed;
- The business involved had an e-toll account with its address listed but SANRAL sent invoices to the wrong address, used ordinary mail instead of registered mail and failed to send any invoices at all during some weeks;
- SANRAL charged VAT on the e-tolls incorrectly and was not entitled to do so;
- SANRAL did not provide reasonable alternative non-tolled routes, which violates constitutional rights to freedom of movement and equal treatment.

The cases in the magistrate's courts are essentially standing still at various stages. There is a formal agreement that all the matters are on hold pending the outcome of the "test case". SANRAL will not stop serving summonses but the process will be placed on hold when a notice of intention to defend or a plea is filed.

The individual merits

The individual cases show a medley of problems, illustrating chaos in the administrative system.

Here are some examples:

- Some defendants' vehicles were sold even before e-tolls started but they are still being pursued for an outstanding e-toll bill; this indicates a problem with the vehicle registration process or cloning.
- Some defendants complain that they receive invoices but the vehicle in the photograph on the invoice is not their vehicle; again, this indicates cloning.
- SANRAL has claimed that the majority of defaulters acknowledged their debts telephonically, while the defendants deny that they ever spoke to anyone from SANRAL or ETC.
- One defendant was sued for unpaid e-tolls despite the fact that he never received any invoices or written notification of a debt.

- Some defendants said their vehicles were written off, but they received invoices for e-toll debts incurred after the write-off date; again, this indicates cloning.
- Some received e-toll bills for both the vehicle and the trailer it was towing, effectively a double charge. One defendant received a bill for a vehicle that was moved on a flatbed truck.
- Some received bills for vehicles they say they have never heard of.
- OUTA's team have found that summonses for the same vehicle registration number appeared in different summonses sent to unrelated people.
- Dates on bills and dates on summonses don't always match.
- ETC was not able to send invoices during certain periods – such as during a Post Office strike – but still sued motorists for those amounts that they weren't aware of.
- Magistrate's courts' jurisdiction is based on, inter alia, either where the defendant lives or where the offence was committed. Sometimes summonses are issued citing the court's jurisdiction as the place where the offence was committed even when that court's jurisdiction does not include part of the GFIP.

Prescription

In a number of cases, a portion of the debt has prescribed and a plea of prescription was added to these.

The Prescription Act of 1969 stipulates that debt prescribes after three years if the creditor has not issued any legal notice or served a summons on the defendant. Therefore the e-toll debts start prescribing from 3 December 2016 if SANRAL failed to take action. Prescription is interrupted by the service of the summons on the defendant not by the issuing of the summons. This is important as many summonses are issued within three years but only served on defendants months later.

In many of the SANRAL/ETC claims against defaulters, the legal team has found that SANRAL is seeking to enforce claims in which a portion of the debt has prescribed.

The summonses received by OUTA supporters includes this example:

- The defendant was sued for R46 506.11 for e-toll liability incurred by the before 31 August 2015;
- The summons was served on the defendant on 18 December 2017;
- 18 December 2017 is more than three years after all offences committed up to 17 December 2014;
- SANRAL claimed for e-toll bills run up from 3 December 2013 to 17 December 2014, an amount of R35 744.36;
- This leaves the defendant with R10 761.75 of e-toll debt that had not prescribed and for which the defendant should have been sued;
- A special plea of prescription raised in court should be upheld and will leave the defendant with R35 744.36 less liability.

Criminal offences

In terms of Section 27(5)(a) of the South African National Roads Agency Limited and National Roads Act of 1998 the refusal or failure to pay e-toll fees is a criminal offence. The refusal, failure or omission to act (to pay) is the criminal offence.

Those convicted of this offence face imprisonment of up to six months or a fine of up to R1 000, payable to SANRAL. The debt owed to SANRAL will still exist and will still be deemed an unsuccessful collection.

Prescription is not applicable to these criminal proceedings.

4. The finances

The GFIP costs ballooned from the promised R14.3 billion for Phase I as part of a total of R22.0 billion for both Phase I and Phase II, to a cost of R20 billion for Phase I alone. This is

not the full cost: adding on the collection costs and the interest payments takes the full cost to R89.722 billion over 24 years.

The spiralling cost

During 2007, Cabinet approved the GFIP⁹ and, in January 2008, Minister of Public Enterprises Alec Erwin said Cabinet had approved it at a cost of R23 billion¹⁰.

Budget 2008 noted that Phase I of the GFIP, due to be completed by 2012, would cost R14.3 billion and SANRAL had Government approval to raise this money in the capital markets.¹¹

Budget 2010 noted that the “total project cost” of Phase I and Phase II of the GFIP would be R22.0 billion and that Phase I would be completed in 2012 and Phase II in 2020.¹²

The budgeting was very soon revealed as completely inadequate.

In March 2011, Minister of Transport S’bu Ndebele outlined the costs in a reply to Parliament¹³: “The total cost for the road construction: R16.9 billion, including CPA (contract price adjustment), excluding VAT. Other costs related to the toll infrastructure (R725 million) and toll system (R1.16 billion) amount to R1.89 billion (excluding VAT). The costs related to the implementation of Intelligent Transport Systems (ITS) (R350 million) and current maintenance (R90 million) amount to a further R440 million (excluding VAT). The total estimated cost amounts to R19.23 billion (excluding VAT). These costs reflect the physical implementation costs, inclusive of ongoing maintenance and operations costs until toll collection will commence. The above do not include financing costs.”

Minister Ndebele said SANRAL funded the GFIP through bonds which would be recovered in 2028. “The total toll portfolio debt is R27.7 billion as at December 31, 2010,” he said, the

⁹ Cabinet statements during 2007 do not explicitly state this; the statement from the Cabinet meeting of 24 July 2007 refers to a decision to “support the initiative in principle”. A SANRAL statement dated 4 November 2014 refers to Cabinet approving the scheme in 2007 and a statement on 11 January 2008 by Minister of Public Enterprises Alec Erwin says “Cabinet approved the Gauteng Freeway Improvement Scheme at a cost of R23bn”.

¹⁰ Statement by Minister of Public Enterprises Alec Erwin, 11 January 2008

¹¹ Budget Review 2008

¹² Budget Review 2010

¹³ RNW328 published on 28 March 2011

majority of this for the GFIP. Ndebele also said that at a 66c/km tariff, the monthly toll revenue was estimated at R300m a month, with unrecoverable debt of 5 percent of possible revenue.

Budget 2012 referred to the 185km upgrade – which was Phase I only – with debt-financed investments for this totalling R20 billion. Public opposition had already led to a reduction in the e-toll tariffs, even before the gantries were switched on, and at the end of 2011/12 SANRAL received a bailout of R5.75 billion.¹⁴

The law which had to be written to enable that R5.75 billion bailout stated that this was for SANRAL “to pay for debt incurred for the completion of the Gauteng Freeway Improvement Project”¹⁵, so if SANRAL spent this on operating expenses instead, that would have been illegal. SANRAL’s annual report for 2012/13 has an incoherent note which indicates that this may indeed have been spent on operating expenses: “Government approved an extraordinary grant to SANRAL to reduce the overall debt, which includes funding acquired for phase 1 of the Gauteng Freeway Improvement Project (GFIP). This was done to support SANRAL’s viability after reducing the tariffs of the GFIP toll route. As SANRAL already complied with the conditions attached to the grant received, by utilising the cash received to finance their operations. Therefore the grant will be recognised in the year in which it was received (2012).”¹⁶

In May 2012, SANRAL CEO Nazir Alli said in an affidavit to the Constitutional Court that the cost (the price) of the GFIP was R20 billion, but the overall cost for SANRAL over the 24 years of the loan was R89.722 billion, calculated in rand with a September 2011 value. The R89.722 billion includes: the initial R20.630 billion price; maintenance at R10.670 billion; the Violations Processing Centre operating expenditure of R6.194 billion; the toll-related operating expenditure of R12.170 billion; “other operational expenditure” of R1.727.11 billion; and interest payments of R38.331 billion¹⁷.

Paying off that R89.722 billion would need e-toll collections of R10.242 million every day for 24 years. This is rather different to the GFIP planning estimates, as stated by Alli in that same affidavit: “The estimates that were made at the time were that the average costs of collection

¹⁴ Budget Review 2012

¹⁵ Additional Adjustment Appropriation Act of 2012. This is further outlined in the “Supporting Note on the Additional Adjustment Appropriation Bill (2011/12 financial year), 2012”, handed to the Standing Committee on Appropriations and dated 9 March 2012.

¹⁶ Note 23 to the financial statements, SANRAL Annual Report 2013

¹⁷ Affidavit by Nazir Alli, National Treasury et al vs OUTA et al, Constitutional Court case CCT38/12 dated 21 May 2012

and recovery would be approximately R447 million (in 2007 rand) per annum over the life of the project which includes the costs associated with the transaction clearing house, open road tolling back office, maintenance of the toll system and the violation processing centre.”

Despite Alli’s explanation of costs, the following year Budget 2013 gave the cost as R18.9 billion, with no reference to a second phase.¹⁸

During 2014/15, the GFIP e-tolls had brought in revenue of R1.2 billion¹⁹ and the following year R3.8 billion²⁰; however, these amounts appear to reflect the amounts billed rather than collections. The reduction in e-toll tariffs brokered by then Deputy President Cyril Ramaphosa in May 2015 resulted in further funding for SANRAL totalling R2 845.098 billion from 2015/16 to 2020/21 to compensate.²¹ This compensation added to the March 2012 bailout will take SANRAL’s direct GFIP funding from Government to R8 595.098 billion.

Budget 2018 noted that SANRAL’s finances “remain weak due to opposition to the Gauteng Freeway Improvement Project. The agency may require recapitalisation in 2018/19.” This Budget also noted that the project value – by this time clearly only Phase I – was R20 billion.²²

Phase II has never started and the costs of Phase I spiralled out of control, leaving the public with a massive bill. Neither SANRAL nor the Department of Transport have explained this financial planning and implementation failure.

By November 2017, SANRAL’s debt had ballooned to R48 billion, although it’s not clear how much of this is due to GFIP. Minister Maswanganyi explained the state of the finances to Parliament: “We are collecting R65 million instead of R230 million. That in itself has got a serious impact because we are spending R2 billion from the non-toll portfolio to service the debt... We are not saying that in the future we are not going to e-toll but for now we have a debt that we have to service of R48 billion...”²³

During 2008/09, when work started on the GFIP, the government guarantees to SANRAL stood at R6.708 billion. By 2012/13, when construction was finished, the guarantees were R19.482 billion. Now in 2018/19, the guarantees are at R28.382 billion.

¹⁸ Budget Review 2013

¹⁹ Budget Review 2015

²⁰ Budget Review 2016

²¹ Estimates of National Expenditure, Vote 35 Transport

²² Budget Review 2018

²³ Oral reply to Question 338, recorded in Hansard, 29 November 2017

Gauteng motorists have effectively been dumped with the cost of a disastrously budgeted project with record-breaking costs.

The collection agency

Kapsch Trafficom, an Austrian company, won the tender from the SANRAL for the design and operation of the e-toll system in Gauteng. Kapsch and its BEE partner TMT Services & Supplies were the shareholders in the South African registered e-tolls collection company, Electronic Toll Collections (ETC). In 2016 the BEE partner (TMT) to Kapsch divested its interests in Kapsch and the Austrian company is now the sole owner of ETC. The e-tolls collections company is now completely in foreign control and profits go off-shore.

On 6 March 2016 in a parliamentary reply, Minister Peters said that SANRAL had appointed ETC in 2009. “The contract will finish for the operations of the Transaction Clearing House (TCH) and the Violation Processing Centre (VPC) components of the project after 5 years of toll collection operations (ie December 2013 to December 2018) and for the roadside equipment, maintenance and Open Road Toll (ORT) back office operations, after 8 years of toll collection operations. The collection of outstanding debt is managed within the VPC component of the contract.”²⁴

However, a year later a different minister gave a contract length that was a year longer. In a parliamentary reply in September 2017, Minister Maswanganyi said this: “The current e-toll operations contract comes to an end in December 2019 and has an option to be extended for a further 2 years. SANRAL will review its options and the performance of the current contractor before making a decision whether to extend the contract for such an extension or retender.”²⁵

The above replies are confusing and contradictory.

²⁴ RNW883 published 25 April 2016

²⁵ RNW2767 published 19 September 2017

The e-toll collections

During 2017/18, SANRAL's contractor counted e-toll transactions worth R2.770 billion but collected only R725.82 million of this, according to Minister of Transport Blade Nzimande.²⁶

The Minister gave the monthly breakdown of collections as follows:

Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18
R64.33m	R56.01m	R59.14m	R68.46m	R57.79m	R59.44m	R72.78m	R68.70m	R16.55m	R84.30m	R61.74m	R56.58m

He said that during 2017/18, SANRAL paid the toll operator R643 million, which left SANRAL with e-toll revenue of just R82.92 million. (The costs of the ongoing legal action against defaulters are not included, so the situation is likely even worse.)

Assuming a billing rate of R2.770 billion and SANRAL's claim of 29% compliance, SANRAL is losing R5.3 million in unpaid e-toll bills every day.

"In addition, R23 million was received for financial transaction clearing fees from toll concessionaires as part of the services delivered nationally for electronic toll collection transactions. The total amount processed by the National Transaction Clearing House for e-toll transactions for the 2017/18 financial year amounted to R2 770 million," said the Minister.

This is a collection rate of just 26%.

SANRAL has referred to a compliance rate of 29%. In a reply to Parliament, Minister Maswanganyi said that, based on e-toll invoices issued from 1 April 2015 to 31 March 2017, that the compliance rate for February 2017, based on rand value, was 29%, but would not disclose the outstanding debt.²⁷

Collection costs

From the inception of the contract in October 2009 to August 2017, the toll operator (ETC) was paid R3.840 billion for toll operational costs, said Minister Maswanganyi in a parliamentary reply, and would be paid R645 million during 2017/18. He said that the rates

²⁶ RNW1524 published on 4 June 2018

²⁷ RNW1328 published on 5 June 2017

were fixed for the contract period and only adjusted for inflation in accordance with the published CPI.²⁸

In June 2017, the Minister said that R225 million of those costs had been for “invoice printing and posting” and another R131 million for buying e-tags from a sub-contractor.²⁹ In another reply the same month, the Minister said 199 729 accounts were registered for e-tolls³⁰.

Only a month later, some of those costs were revised upwards. The Minister said that two companies provided the e-tags, Kapsch Trafficom AB in Sweden and Q-Free ASA in Norway, and together they were paid R225.6 million excluding VAT for the supply and maintenance of e-tags. (If a million e-tags were issued, this would have been a cost of more than R250 a tag.) The same reply upped the cost of printing and posting e-toll invoices from December 2013 to May 2017 to R345 million.³¹

Again, the parliamentary replies are confusing and contradictory.

Legal costs

SANRAL’s legal costs for taking action against e-toll defaulters are not known.

The cost of drafting and issuing summonses can be estimated, based on number of 8 000 summonses issued³².

The Magistrate’s Court Rules which came into operation on 24 February 2015 make provision for cost calculations according to the claim amount. As most of the summonses are for claim amounts between R7 000 and R50 000, the amount prescribed for taking instructions to sue is R647.50 and for drafting a summons R404.00. In almost all the cases the issuing attorneys had to appoint a correspondent to issue the summons and to instruct the sheriff to serve the summons on the defendant. This extra cost per summons is on average R550.00. Therefore, the minimum total amount to issue and serve one summons for a magistrate’s court matter is R1 601.50, giving a minimum total for issuing the 8 000 summonses of R12.812 million.

²⁸ RNW2767 published 19 September 2017

²⁹ RNW1330 published on 5 June 2017

³⁰ RNW1515 published on 20 June 2017

³¹ RNW2003 published 10 July 2017

³² ETC CEO Coenie Vermaak, quoted by Engineering News, 10 July 2018

This is calculated as if all the cases were issued in magistrate's courts, but the matters issued in the high court have higher costs.

If all the legal costs are taken into consideration (issuing attorneys, sheriffs, corresponding attorneys, test case attorneys and counsel) it is OUTA's opinion that SANRAL's legal bill is currently around R40 million.

Impaired debt

SANRAL's annual report for 2016/17 refers to impairment losses for the year of R3.75 billion of which R3.61 billion related to e-toll debtors.³³ The same report states that failing to pay toll fees is a criminal offence so that only a court may write off toll debt, but amounts which SANRAL deems "irrecoverable" include: debt older than three years; debt of debtors in liquidation or under business rescue; the portions of debt based on old tariffs which were subsequently reduced; and accounts under R500 as cost of recovery would exceed the debt. "The refusal to pay was not regarded as an inability to pay," said the report.³⁴

However, SANRAL subsequently insisted that it had not written off any e-toll debts and these were merely labelled "impaired".³⁵

SANRAL's lack of action and inability to act against approximately 1,2million defaulters resulted in an unfavourable balance sheet, therefor the impairment of R3,6billion in the 2016/17 financial year. SANRAL's lack of action resulted millions of rand of debt that will be very difficult to collect and therefore SANRAL will have no choice other than impairment and eventually to write off the outstanding e-toll debts.

It will be interesting to see what the 2017/18 financial statements will look like with regards to irrecoverable amounts, particularly for e-toll debts unclaimed for three years and thus prescribed.

³³ Auditor-General's report on SANRAL, in SANRAL Integrated Report 2017

³⁴ Notes to the financial statements, in SANRAL Integrated Report 2017

³⁵ "SANRAL clarifies its financials", a statement released by SANRAL on 9 November 2017

5. The political solution

It is clear that failed e-tolls and SANRAL's funding problems need a political solution, and this is a decision which must be taken by the Cabinet.

SANRAL has spent the money and, regardless of public opinion on whether it was rational to spend such a disproportionate amount on the collection system, South Africa must find a way to pay this.

There is clear awareness of the disaster of the e-tolls, the need to pay for the GFIP and the need for an urgent solution. Some comments from key players illustrate the quandary:

- **20 February 2017:** Gauteng Premier David Makhura:³⁶
“We are mobilising resources for public transport infrastructure in ways that will ensure that we don't commit the same mistakes done with the e-tolls. We can't build roads and only later inform citizens that they must pay. In fact, there will no e-tolls on our new roads. I must admit publicly, as I did last year, that all the efforts we have made through the Advisory Panel have not led to the resolution of concerns of Gauteng motorists regarding affordability. We have tried our best. The ultimate solution can only come from national level. We will continue to engage in order to represent the interests of our residents.”
- **29 August 2017:** Minister of Transport Joe Maswanganyi says that SANRAL is developing a long-term strategy, Horizon 2030, which is aligned to the National Development Plan.
“The strategy will enable the development of a 2030 Roads Plan and will review SANRAL's operating model. Also, the new strategy will trigger the development of a new toll roads policy which the Department of Transport will lead.”³⁷
- **4 September 2017:** Minister Maswanganyi says in a written reply to Parliament:
“The e-toll scheme is official government policy and shall continue to be implemented subject to a decision to the contrary from Cabinet.”³⁸

³⁶ State of the Province Address, 20 February 2017

³⁷ Quoted by News24, 29 August 2017

³⁸ RNW2556, published on 4 September 2017

- **29 November 2017:** Minister Maswanganyi says in a written reply to Parliament that a debt of R48 billion needs to be serviced. “The e-toll debt has not been written off and there is no intention for now to write off this debt... The e-toll scheme will not be scrapped based on impairment. Any decision on the future of the Gauteng Freeway Improvement Project, GFIP, and e-tolls will be taken by Cabinet.”³⁹
- **7 May 2017:** SANRAL CEO Skhumbuzo Macozoma, on SANRAL’s annual performance plan, spoke of SANRAL’s financial difficulties:⁴⁰

“The challenges that SANRAL faced in executing its mandate were: The challenges were a further ratings downgrade as a result of poor collection on the Gauteng Freeway Improvement Project (GFIP) e-toll.”

“Low electronic toll collection had resulted in capital projects being postponed and would lead to further road deterioration, the negative outlook on credit rating which resulted in cancellations of bond auctions had placed further strains on funding road construction. Therefore new funding models were proposed but would be discussed after the merits had been investigated.”

“Since I assumed office as the CEO I had sought to defuse criticism against tolls. For instance, there have been engagements with OUTA, people are given access to information and enquiry channels have been set up, an independent study has been set up to look into the pricing of tolls in Gauteng.”
- **7 November 2017:** SANRAL CEO Skhumbuzo Macozoma:⁴¹

“Referring to e-toll, he responded that the decision to discontinue e-toll lied with the Executive Authority. It was not a merely policy matter, but also a political matter. There was a chance of scrapping the e-toll programme. Not all targets related to the e-toll project were implemented due to the anti-tolls sentiment in the public. These targets had to be pushed beyond the medium term, which meant that fewer jobs were created. He further noted that the Minister was engaging with the Premier of Gauteng and Vice President in that respect.”

³⁹ Oral reply to Question 338, recorded in Hansard, 29 November 2017

⁴⁰ During a meeting of the Portfolio Committee on Transport, 3 May 2017, as reported by the Parliamentary Monitoring Group

⁴¹ At SANRAL’s briefing on its annual report for 2016/17 to the Portfolio Committee on Transport, reported by the Parliamentary Monitoring Group

“The Gauteng Freeway Improvement Project had to be resolved as it would ensure SANRAL’s future going concern and possibly enable it to achieve a clean audit. He reiterated that it received an unqualified opinion, as it had in the past. He did not think SANRAL was the worst entity. If the e-toll problem was resolved, then SANRAL would not be lumped together with the other problematic SOEs. A lot of debt was related to e-tolls, as there was an impairment of R3.6 billion so far. The impairment of debt in e-tolls was a serious concern for them.”

- **26 February 2018:** Gauteng Premier David Makhura:⁴²

“Honourable Members, we all know that the [e-tolls](#) have added to the cost of living for many motorists and public [transport](#) users in [Gauteng](#).”
“The new dawn must also bring a solution to the protracted and unresolved problem of [e-tolls](#). It is loud and clear for all to see that [e-tolls](#) have not worked.”

- **21 March 2018:** Minister of Transport Blade Nzimande:⁴³

“The e-tolls project has proved to be disastrous for the government after being rejected by the majority of motorists, citing a lack of consultation and affordability”.
“That’s something that I’m going to have to be urgently briefed about and then we are able to engage around that and see what it is that can be done.”
“The collapse of e-tolls has had a negative impact on everyone, including roads agency South African National Roads Agency.”

- **22 March 2018:** Minister Nzimande:⁴⁴

“A decision on the future of the e-toll project will be made by Cabinet. I as the new Minister will receive a briefing from SANRAL and the DOT on work conducted in the past 6 months in order to determine the next step. I will seek guidance from Cabinet and various stakeholders in this regard.”

- **15 April 2018:** Khusela Diko, spokeswoman for President Ramaphosa:⁴⁵

“E-tolls are high on the president’s agenda and he expects there to be a definitive answer regarding government policy on the matter as soon as possible.”

⁴² State of the Province Address, 26 February 2018

⁴³ Interview with Eye Witness News

⁴⁴ RNW675 published on 22 March 2018

⁴⁵ In an interview with Johan Eybers of Rapport newspaper, 15 April 2018

- **17 April 2018:** Minister Nzimande:⁴⁶

“There are usually debates around the user-pay principle. Who pays?”

“We will have to come up with a strategy of funding road construction and maintenance programmes on a sustainable basis.”

“It is ‘inappropriate’ to scrap the user-pay principle entirely. It is like demanding free higher education for all, it is not progressive. Those who can afford to pay, must pay.”

- **10 July 2018:** Electronic Toll Collection CEO Coenie Vermaak, who said there were 3 million vehicles a day on the GFIP freeways but only 30% compliance on paying e-toll bills:⁴⁷

“The Gauteng Freeway Improvement Project (GFIP) was very poorly communicated and the taxpayer not respected. If people consulted me better, then I would have had a better attitude.”

“Everything that is [associated] with government is looked at with distrust and looked at as a money-making racket. I think there needs to be a process to rebuild this trust.”

“The taxpayer will foot the bill. If we can get over our emotional reactions, we can look at solutions.”

He said 8 000 summonses were issued by ETC: “But this is not a constructive way to solve the problem.”

6. The way forward

It is clear that e-tolls have failed and that a new method of paying for the GFIP must be found.

The summonses for debt are already in the thousands and, particularly where these are defended, create further financial and logistical difficulties for SANRAL and ETC. Even if the defence to all these cases fails, SANRAL and ETC still face the problem of getting payments

⁴⁶ During a briefing to the Portfolio Committee on Transport

⁴⁷ At the Southern African Transport Conference, as quoted in Engineering News, 10 July 2018

from thousands of debtors. Blacklisting thousands of Gauteng debtors will not help Gauteng's economy.

The opposition to e-tolls is widespread, across a range of political and social sectors, making it a political nightmare.

National debate: A national discussion on alternatives is needed: if Government expects the public to pay for this – and who else will? – then the public should be consulted on the solutions.

Fuel levy: An addition to the general fuel levy was proposed at the outset, but this has become increasingly difficult given the steep rise in this levy over the years. Instead of increasing the levy, the use of the existing levy should be reconsidered. For example: it is unreasonable to collect levies from road users but fail to use those funds for road infrastructure; and the diesel rebates for Eskom which have cost billions of rand effectively require road users to fund Eskom. These are funds to redirect to SANRAL.

Speeding fines: SANRAL could mount traffic cameras on the e-toll gantries and collect the revenue from speeding fines. This would also encourage safer driving.

Advertisements: Those gantries could be used for advertising boards. There are 3 million vehicles a day using the GFIP freeways⁴⁸ which is a lucrative advertising opportunity.

Cut the expenses: The end date for the ETC Transaction Clearing House and Violations Processing Centre contracts end either in December 2018 or December 2019, depending on the different Ministers replies to Parliament.⁴⁹ Not renewing these should save billions of rand.

Construction colluders: Why hasn't SANRAL brought civil claims against the construction companies found to have colluded to inflate the GFIP costs?⁵⁰ Why is the public expected to pay for this? These claims should be aggressively pursued.

⁴⁸ ETC CEO Coenie Vermaak at the Southern African Transport Conference, as quoted in Engineering News, 10 July 2018

⁴⁹ RNW883 published 25 April 2016 and RNW2767 published 19 September 2017

⁵⁰ See replies to Parliament RNW1131 of 17 September 2014 and RNW580 of 24 March 2015