

MONEY down the DRAIN

Corruption in South Africa's water sector

A Water Integrity Network / Corruption Watch report

Money down the Drain:

corruption in South Africa's water sector

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ABBREVIATIONS

African National Congress	ANC
Airports Company of South Africa	ACSA
Auditor-General of South Africa (the institution)	AGSA
Auditor-general (the individual)	AG
Black Economic Empowerment	BEE
Chief executive officer	CEO
Chief financial officer	CFO
Department of Public Service and Administration	DPSA
Department of Water and Sanitation ¹	DWS
Deputy director-general	DDG
Director-general	DG
Disaster Management Act	DMA
Energy & Water Sector Education Training Authority	EWSETA
Enterprise Outsourcing Holdings	EOH
Information and communications technology	ICT
KwaZulu-Natal	KZN
Lesotho Highlands Water Project	LHWP
Member of the Executive Council	MEC
Mpumalanga Economic Growth Agency	MEGA
National Development Plan	NDP
Non-governmental organisation	NGO
Public Finance Management Act	PFMA
Regional bulk infrastructure grant	RBIG
Sector Education Training Authority	SETA
Special Investigating Unit	SIU
Standing committee on public accounts	SCOPA
Strategic Water Partners Network	SWPN
Statistics South Africa	Stats SA
Trans-Caledon Tunnel Authority	TCTA

¹ The Department of Water and Sanitation has undergone several name changes in the past 25 years. It started off in 1994 as the Department of Water Affairs and Forestry, changed to the Department of Water and Environmental Affairs in 2009, and has been the Department of Water and Sanitation since 2014. The ministerial titles have also changed accordingly, from Minister of Water Affairs and Forestry, to Minister of Water and Environmental Affairs, then Minister of Human Settlements, Water and Sanitation. In this report 'minister' is understood to be 'minister of water and sanitation'.



Communal tap in Soweto

SUMMARY

Corruption in South Africa's water sector, its consequences and a way forward

Background

South Africa faces significant water challenges; water is often not available where and when it is needed, or of the quality needed, due to unpredictable rainfall, limited infrastructure, the misuse of financial resources, and poor management – aggravated by corruption. The impact of corruption in the water sector is measured in dry taps, lost jobs and polluted rivers; many, particularly young children, old people, and those with compromised immune systems, have become ill from drinking unsafe water or their homes, and toilets cannot be kept hygienic.

Corruption in the water sector has resulted in deaths.

This corruption extends from taps in rural villages to the systems that supply South Africa's economic heartland. Village taps have run dry so that councillors and their friends could get contracts to truck water. Construction of a dam to provide water to Gauteng has been delayed by years, in part because a minister sought to change procurement rules to benefit her friends. In the Western Cape, the raising of the Clanwilliam Dam, which would create thousands of new farming jobs, has been delayed for similar reasons.

Companies have paid bribes to get business. Some companies have promoted unnecessary projects and claimed payment for work done badly or not at all, often colluding with officials who oversee their work. Others have monopolised specialist areas of work to grossly over-charge for their services. Individual households are involved through unauthorised, unmetered water connections, often made by the same plumbers who maintain the supply systems, using material from their workplaces.

These problems are aggravated by a failure to appoint competent people to do the jobs required and officials being pressurised by politicians and seniors to do the wrong thing – risking dismissal or worse if they don't comply.

Corruption drivers and strategies

The report analyses a range of corruption strategies including:

- Manipulation of procurement and operational processes;
- Influencing policy and regulatory decisions; and
- Taking control of the decision-making sites of key institutions.

This analysis, combined with an understanding of the drivers of corruption, informs the recommendations made. Corruption in the water sector is systemic; the formal rules have been superseded by informal rules that bypass or distort formal processes.¹ The solution to this is not simply strengthening the formal rules. If the underlying driver is political – for example, securing political party funding or securing political power - which appears to be the case in some instances, strategies to address it must be different from where the main driver is personal financial gain.²

What is being done?

The combined efforts of whistle-blowers, investigative journalists, the Auditor-General of South Africa (AGSA) and the Special Investigating Unit (SIU) have begun to address many of the issues raised in the report. However, although some officials have resigned and others face internal disciplinary action, there have been few serious consequences. This raises questions about the effectiveness of these actions.

1 Helping countries combat corruption: the role of the World Bank. 1997

2 Helping countries combat corruption: the role of the World Bank. 1997

RECOMMENDATIONS

Designate the water sector as an ‘island of integrity’

The huge socio-economic impacts of corruption in the water sector provide strong grounds for designating it as an island of integrity.³ South Africans cannot afford the burden of corruption in a sector which is a vital determinant of health and life (drinking water), dignity (sanitation) and economic prosperity.

It will take combined work from government and civil society to achieve this. One useful model would be the establishment of an anti-corruption forum such as the Anti-Corruption Health Forum. This forum, led by the SIU, brings together key stakeholders including law enforcement agencies, relevant government departments and agencies, representatives of the private sector, regulators and civil sector organisations active in healthcare and in combating corruption. Reports of corruption and gross irregularities are submitted to the forum and allocated to the agency best placed to address them. The involvement of the AGSA and other Chapter 9 institutions would further strengthen this.

Ending impunity – instilling a culture of consequences

Corruption in the water sector will not end if flagrant abuses go unpunished. A culture must be established in which misconduct has consequences. This is the responsibility of the relevant water sector institutions, the AGSA and the broad family of law enforcement authorities, including the SIU.

Rampant irregularity in the management of public resources should be regarded as red flags for corruption. Furthermore, given the ubiquitous presence of political appointees in so many alleged instances of grand corruption, the likelihood of political corruption should always be considered by the investigative authorities. Indeed, the authorities could do well to open investigations into all large procurement contracts concluded during the ministerial tenure of Nomvula Mokonyane.

No honest institutions without honest and ethical people

There are two important requirements for the water sector to become an island of integrity. Ethical leaders must ensure that appointments to organisations reinforce these values and processes must be in place to remove those who break the rules for corrupt purposes.

Consideration should be given to the involvement of external agencies such as the Public Service Commission in panels responsible for appointment and discipline.

The appointment of the boards of the public agencies in the water sector should be made in consultation with panels constituted to develop and ensure the adherence to merit-based criteria in filling these important positions.

Procurement

The 2012 National Development Plan highlights the importance of creating a transparent, responsive and accountable public service. Some organs of state already make substantial amounts of procurement data public, although more could be done. At present the primary corruption challenge is the systemic capture of parts of the state apparatus and disregard for procedures. Detailed reform of procurement systems will not be appropriate until greater control is gained over public financial management.

Once this has been achieved, there are many systems that have been trialled elsewhere that could strengthen the sector, including a variety of open contracting models which seek to mobilise participation from the private sector and civil society to achieve greater accountability in public procurement.^{4,5} Open contracting recognises that greater transparency from government is insufficient – accountability requires that the private sector compete fairly and that civil society monitor and analyse the public procurement process. Methods used include integrity pacts, e-procurement, data standards, and red-flag monitoring.

Political appointees, such as the minister and board members of public agencies, should not involve themselves in procurement and appointment decisions and where they do so, it should be treated as a red flag for corruption.

3 The impact of ‘islands of integrity’. <https://knowledgehub.transparency.org/helpdesk/the-impact-of-islands-of-integrity>

4 See, for example, <https://www.open-contracting.org/>

5 *Opportunities for Open Contracting in public sector procurement: a review of legislation*. https://www.researchgate.net/publication/325765499_Opportunities_for_Open_Contracting_in_public_sector_procurement_a_review_of_legislation

Environmental factors that must be addressed

The roots of corruption in the water sector are located in the wider society. Corruption will not successfully be combated unless these are also addressed.

Preferential procurement

All forms of preferential procurement, whether for local employment, industrial development or black economic empowerment (BEE) introduce complexities into the process that can open opportunities for corruption.

The social benefits of BEE justify the continuation, even intensification, of the programme. However, the operation of elaborate regulatory frameworks such as BEE should be closely policed, particularly at key decision-making points. The savings in reduced instances of corruption would pay for increased expenditure on close scrutiny of the application of BEE transactions. It would also enhance the credibility of BEE as well as of preferences for the local sourcing of goods and services as well as local employment.

Regulation of political parties

The funding of political parties offers obvious opportunities for extending the influence of money over politics. This resulted in the Political Party Funding Act being passed in 2019.

However, recent controversies foreground important money/politics relationships that are not covered by an Act confined to political party funding, such as the funding of internal political party leadership contests. This points to the need for general regulation of political parties and not only regulation of party funding.

Simultaneous responsibility for managing a large party programme that demands significant funding and executive responsibility for a government department that has a large procurement budget supports an inference that state responsibilities are being abused to support party responsibilities.

This supports our recommendation that ministers be prohibited from participation in procurement decisions. Further consideration may be given to regulating the role of party office bearers in the management of state assets.

Educate the private sector

Too often, private business is seen as the victim of corruption: bribes are paid and tender awards accepted with the excuse that such practices are necessary to get work. This attitude must be challenged. Private sector bidders that enter into irregular contracts are breaking the law and placing their businesses at risk. Companies have a legal duty to ensure that correct procedures have been followed in the award of public contracts. They should be appropriately penalised when they don't.

Support civil society

The work of the media and wider civil society in uncovering corrupt activities, publicising them and pursuing them until remedial action is taken, must be recognised, emphasised and supported.

The right of citizens and civil society organisations to access information about public management processes, must be recognised and respected, including information on procurement processes and regulatory decision-making. This will enable them to concentrate on the analysis of information and engagement with institutions rather than on court battles to obtain information.

The water sector already has extensive linkages with a variety of civil society organisations and these must be supported. They have important operational insights that may not be available through government structures which make them valuable allies.

CONCLUSIONS

Corruption in the water sector must be tackled: water is too important to allow its management to be undermined.

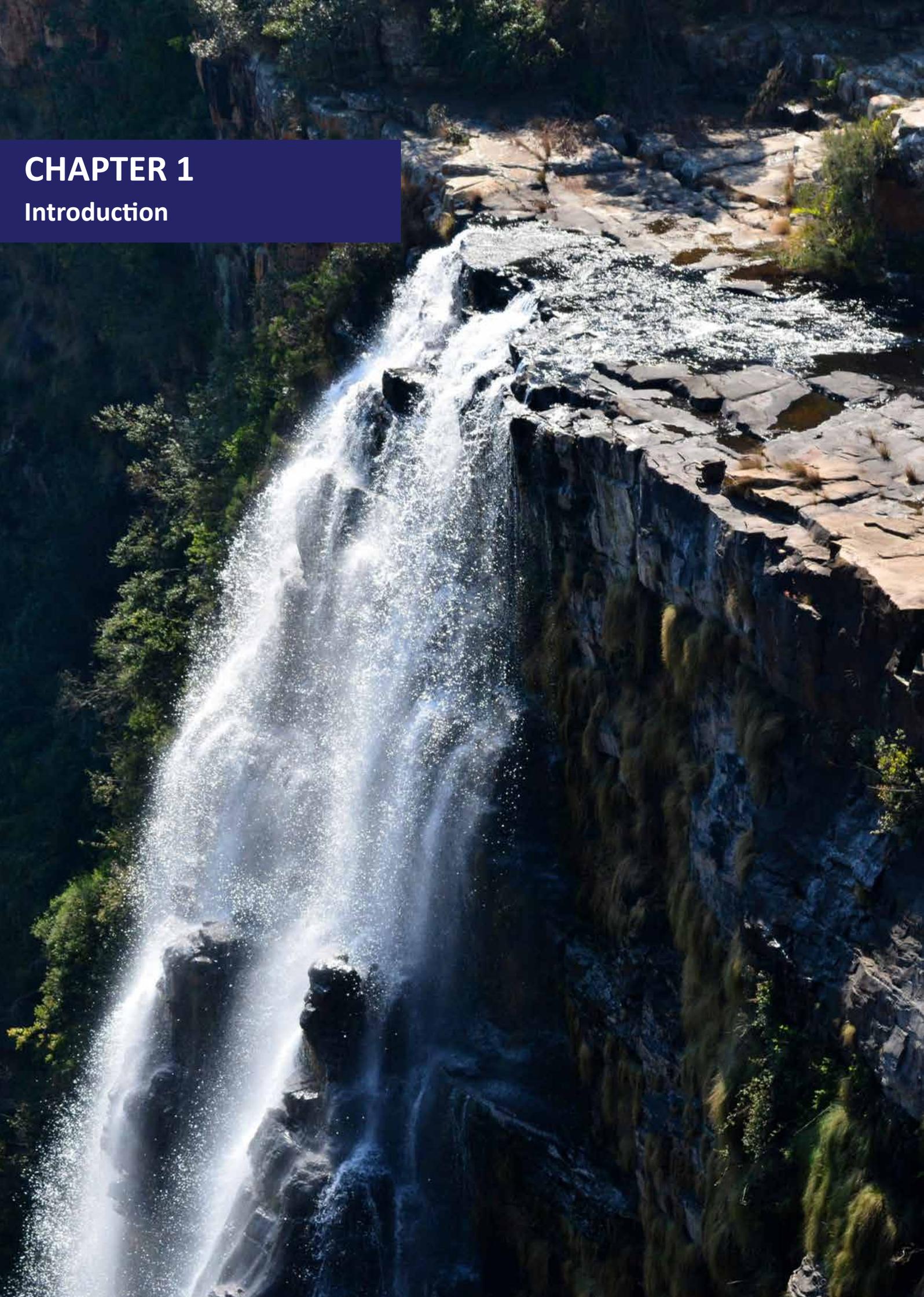
Much of the corruption is driven by wider political and economic challenges. Unless these are also addressed, it is unlikely that efforts to improve and enforce procedures and transparency will be enough to change the situation. A particular focus is needed on the question of political funding.

The social and economic impacts of corruption in the water sector must continue to be highlighted as part of broader anti-corruption campaigns. The goal should be to mobilise public opinion to protect society from water sector corruption.

Ending corruption will not solve all the country's water problems, but an effective campaign to wash corruption out of the water sector could create the environment in which larger water problems can be tackled. It could ensure that water security for all becomes, once again, the primary goal of the water sector. And, in doing this, the water sector could provide guidance and inspiration for the rest of the nation.

CHAPTER 1

Introduction



INTRODUCTION

South Africa was seen as a global leader in water resource management and the provision of water services.

Not long ago, democratic South Africa was seen as a global leader in the management of water resources and the provision of water services. It had achieved the 2015 Millennium Development Goal for domestic water supply; through its free basic water policy it had given practical effect to the Human Right to Water, and it had given legal protection to environmental water flows. In 2002, it led the campaign to set a global goal for sanitation provision that is now included in the UN's Sustainable Development Goals.

Since then the performance of South Africa's water sector has declined significantly.

- The reliability of water supply services is falling according to official data;
- The resilience of services to problems such as drought has decreased. While Cape Town's temporary water restrictions gained worldwide publicity, regular supply failures are normal for millions of people around the country;
- Payment for water is falling and, as a result, municipal debt is increasing, undermining service provision in many localities where there is simply not enough money for operation and maintenance;
- Pollution of rivers due to failed municipal wastewater management and poorly regulated mining operations is widespread and growing;
- In 2018 the Auditor-General and Parliament's Standing Committee on Public Accounts reported that the management of the national Department of Water had collapsed, with billions of rand of irregular expenditure, huge debts and failed projects.

Many of these problems have been attributed to corruption. This report seeks to document some cases of corruption in the water sector, to understand its impact and to consider how it can be controlled so that people, their livelihoods and their environment are protected. To do this, it is first necessary to be clear about what we mean by corruption and to recognise the different forms that it can take.

The corruption that contributes to the failure to achieve and sustain water security must be addressed. It cannot be allowed to destroy hopes, health and lives.

Corruption is **the abuse of public resources or public power for personal gain by anyone at any level of government or in business**. It exists in all countries, the only difference being a matter of degree. But how do those responsible benefit from it? Who loses and who else gains? Those questions are more difficult to answer.

Corruption is often linked to the unproductive accumulation of personal wealth. And, if we measure the health of a society by its financial wealth, then the conclusion of the International Monetary Fund is important: "systemic corruption has a particularly pernicious effect on economic performance".

But in complex societies, not everyone benefits from economic growth. Many indeed feel marginalised as some people become better off while they are left behind. Their resentment is helping to drive populist political movements around the world. Politicians recognise and respond to this. They promise to do what is necessary to provide jobs and services to a community, in exchange for votes.

Is this reflected in the kind of corruption that is found in South Africa's water sector? More precisely how does corruption impact on the water security of South Africans and their society more broadly?

This report seeks to present a systematic analysis of corruption in the water sector and the impact that it has had, based on specific examples. The analysis shows that the water security of South African society, "the reliable supply of an adequate quality and quantity of water to meet social

and economic needs while protecting the environment”,¹ depends on effective governance and management. When and where this fails, poor people are often affected first and hardest, but eventually the whole society carries the cost.

The corruption that is contributing to South Africa’s failure to achieve and sustain water security must be addressed. It cannot be allowed to destroy peoples’ hopes, health and even their lives.

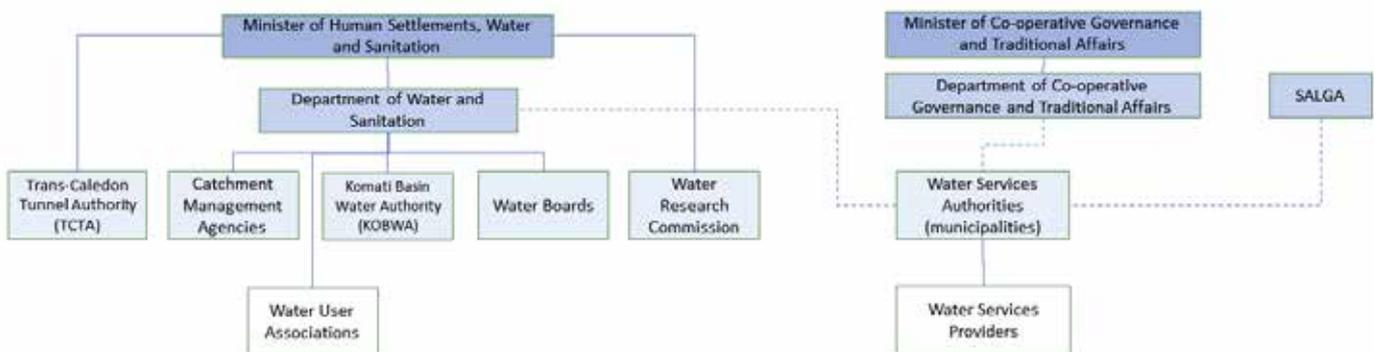
THE WORLD OF WATER - a complicated business

We distinguish between water as a natural resource (underground and river water) and the provision of water supply and sanitation services (the water in the pipes)

What do we mean by the “water sector”? In this report, a distinction is made between water as a natural resource (the water in the rivers and underground) and the provision of water supply and sanitation services (the water in the pipes).

Many public organisations are involved in protecting, managing and using the country’s water resources and providing water supply and sanitation services. These range from the national Department of Water and Sanitation (currently part of the Ministry of Human Settlements, Water and Sanitation) to local municipalities. National government is responsible for much of the management of water in rivers, wetlands and lakes – including those shared with other countries. Municipalities are responsible for providing water services, working within a framework of regulations and standards set by national government.

Institutions active in the South African water sector



The work of all these organisations helps to ensure that water flows through natural systems and human-made infrastructures to meet people’s needs. And they need to work together, effectively. If one water management function fails - to protect the resource from pollution, for instance - communities and enterprises may be harmed. So this report considers the full scope of the water sector because failures in one organisation often impact on others – and corruption is often the cause of such failures.

The complex nature of water management presents many opportunities for corruption. Decisions have to be taken about the allocation of available water resources between different users and uses. Actions need to be taken against polluters. The construction and operation of large

1 Grey D, Sadoff CW (2007) *Sink or swim? Water security for growth and development*. Water Policy 9 (6):545–571

infrastructures – dams, canals and pipelines – involves specialised technical services and complicated procurement procedures.

The provision of water supply and sanitation services is a separate but related activity. It involves taking water from a reliable source, treating it to ensure it is safe to use, and distributing it to the households, businesses and social institutions that need it – all of which involves infrastructure. Once it has been used, wastewater has to be collected and treated before it is released back into the environment.

All water management activities require funding. This may come from government's tax revenue or payments by users for the services they receive. And, because just about everyone in society depends on the sustainable management of the resource and services, water management institutions are usually part of government or related public management systems.

Over many decades, South Africa has developed both the institutions and the infrastructure systems needed to provide national water security. When these systems work, they are almost invisible but, when they fail, it can be disastrous. This was shown by the recent crisis situation in Cape Town and continues to be demonstrated by the ongoing water services challenges faced in many small towns and rural areas across the country. In many cases, corruption has contributed directly to these failures.

WHAT IS CORRUPTION – and why does it matter in water and sanitation?

In South Africa's water sector, corruption has seriously undermined the water security of households, communities and cities

Corruption, the abuse of public resources or power for personal gain, is not just about money. The gains of the perpetrators may include access to power, social status or favours such as preferential treatment for family and friends. And the abuse may involve action or inaction, as when a factory's pollution is ignored by the regulator.

This report focuses on the drivers and consequences of corruption – the public losses that result from the personal gains. There are far too many examples in South Africa's water sector where corruption has seriously undermined the water security of households, communities and cities.

The most obvious impacts have occurred in poor communities where service provision is already weakest. Where funds are scarce, any corruption that diverts money from public purposes to private pockets directly reduces the provision and quality of services. In particular, where needs are great and money scarce, corruption diverts funds that could have provided services to under-served users (see [The Giyani Water Project](#)).

Although transporting water by road is vastly more expensive than providing a piped supply, it has become a lucrative business for private tanker operators. Shockingly, there have been cases where municipal officials worked with tanker owners, interfering with the public water supply to create business opportunities for themselves (see [How water tankers cause taps to run dry](#)). And where tanker supplies are provided by the municipality itself, it is common for drivers to demand payment for the water they are supposed to make available free of charge – and often to sell it to more well-off households at the expense of the poor.

Bad public policy decisions, made for the wrong (corrupt) reason, can have significant negative impacts. This is evident, for example, where large and expensive capital projects are promoted instead of smaller, more cost-effective alternatives (see [The Giyani Water Project](#) and [Mangaung and the Gariep pipeline](#)). At the least, this puts up the cost of services to users and to the state, not only in the construction, but in the ongoing operation and maintenance costs.

But once a culture of corruption has spread, it has more insidious, and arguably more corrosive, effects. Effective management is an obstacle to corruption. So competent and honest officials

are often challenged – and threatened and dismissed – if their recommendations and actions do not suit those of their corrupt superiors or indeed of their subordinates (see [IT contracts are a perennial problem](#)).

Competent and honest officials are challenged – and threatened and dismissed – if their actions and recommendations are deemed unsuitable for corrupt purposes

To add to the confusion, action against honest officials is often based on their alleged contravention of the rules and regulations that are supposed to protect the public from corruption. But there is ample evidence that these provisions are used to intimidate or remove officials who are inconveniently competent and honest. This clears the path for procurement processes to be ignored, for contracts to be awarded to incompetent consultants and contractors, for licences to be issued inappropriately, and for regulatory offences to be ignored (see [Mining licences, pollution and public vs private interests](#)).

While some businesses are willing partners in corruption (see [Corporate corruption creation](#)), many others are also its victims. Interference in procurement and regulatory processes and shortage of funds delays projects, which impacts on the water sector's wider community of partners and stakeholders such as construction companies and their staff. September 2019, Stats SA reported that 30 000 jobs had been lost in the construction sector over the previous year. And many of the water sector's leading construction and consulting companies have been sold to foreign owners or just closed down. Corruption played a part in the loss of these jobs.

One specialist contractor EsorFranki (who had bid for the Giyani project) stated in the company's 2018 annual report² that:

“Alongside contract delays, non-awards and failure to implement stated policy, we have also experienced an increase in unjust tender awards which are then challenged in court. This lengthy legal and court process not only delays the contract commencement but also incurs legal fees impacting results.”

Aside from the delays and additional costs, these problems led the firm to retrench almost 1 000 staff, 40% of its workforce. More would have been jobless if the company had not had other work outside South Africa.

This was a company that made a real effort to stay in the sector. Others have just given up. Aveng, one of South Africa's top five construction companies, recently sold its water business and now intends to work on other projects, mainly outside South Africa.

Leading consulting engineering firms, unable to maintain an adequate workflow, have sold out to international companies or just gone out of business. They include Ninham Shand, which developed the concept for the world famous Lesotho Highlands Project which sustains the people and economy of Gauteng and surrounding provinces. With these firms goes the knowhow built up over many years as well as vital opportunities to train the new generation of professionals who will be needed to deal with increasingly complex future challenges to our water security.

In the meantime, the safety and reliability of water supply, particularly in poor rural communities, is declining dramatically, according to household surveys undertaken by Stats SA. The DWS reported that in 2016 in the country's poorest rural districts, only 37% of households had a reliable supply, despite the billions of rand that has been spent on infrastructure. The cases outlined below show how corruption and mismanagement more generally have undermined South Africa's water security and damaged countless lives.

CHAPTER 2

Cases and their consequences



CASES – AND THEIR CONSEQUENCES

The problems are systemic, involving people at all levels, from plumbers and tanker drivers to mayors and ministers. Many private businesses benefited richly from corruption and in some cases, actively organised and encouraged it.

This report was prompted by a series of investigations published in the *City Press* about corruption in the water sector. These revealed serious irregularities involving huge sums of money in DWS projects in Giyani, Limpopo. Concerns grew when reports emerged about thousands of unpaid and unemployed trainees in the department's multi-billion-rand 'War on Leaks' project. Then it emerged that nearly a billion rand had been committed to a computer project that wasn't needed. These cases, it is alleged, all involved former water and sanitation minister Nomvula Mokonyane and her associates.

However, the problems of corruption in the water sector go well beyond just a few individuals. They are clearly systemic, involving many people at all levels, from plumbers and tanker drivers to mayors and ministers. Many private businesses joined in too, benefiting richly from corruption and in some cases, actively organising and encouraging it.

A wide variety of cases have been identified across many areas of activity. They range from corruption in the supply of water by road tankers and the provision of temporary toilets, to the systematic looting of large scale construction contracts intended to develop water resources and keep the country water secure. Corruption means that mining's impact on water has not been properly regulated. And the fourth industrial revolution also figures large with massive corruption in huge and unnecessary IT projects.

The strategies used for this looting have included the capture of entire water sector organisations. But every facet of management has been exploited, including policy making, procurement, and operational and contract administration. Collusive business practices have helped to create an environment for corruption. And, even at the level of the household tap, corrupt officials have found ways to exploit people's basic needs for personal profit.

The cases presented have been selected to illustrate particular generic areas of focus. Also included are a few cases where attempts at corruption failed - these show that corruption can be curbed and provide some ideas about how to reduce, if not prevent, it.



2.1 THE MOKONYANE PORTFOLIO

We start with cases that emerged during the tenure of Nomvula Mokonyane as minister of water and sanitation (2014 – 2018). Corruption was already a problem in the department before Mokonyane's arrival, with external investigations underway since 2012. But at that stage, the scale was still relatively small – the Special Investigating Unit (SIU) reported 28 criminal cases involving R50-million.³ By the time Mokonyane left, irregular expenditure was well over R4-billion with new cases still being uncovered and DWS effectively bankrupt.



By the time Mokonyane left, irregular expenditure was well over R4-billion

A pattern appears to have emerged of ministerial intervention to favour certain businesses and programmes and to intervene in the staffing of the DWS and water sector institutions to get her way. The events between 2014 and 2018 provide what appears to be a textbook case of the pervasive impacts of high-level institutional corruption and the mismanagement that is invariably associated with it – or vice versa. They offer a cautionary tale about what can happen if political leaders have the wrong objectives and incentives.

Sweetwaters, Kanana Park Extension 6 – a prologue

Nomvula Mokonyane was involved with the water sector long before she became minister of water and sanitation. While a Member of the Executive Council (MEC) for housing in Gauteng in 2005, she tried to have the Sebokeng wastewater plant south of Johannesburg expanded. When she left the national portfolio of water and sanitation in 2018, it was still unfinished (see below).

But another legacy, relevant to the focus of this report, was the Gauteng project to provide water and sewage infrastructure in Kanana, a suburb in the same area. The project became controversial after the board of directors of the company that was contracted to build it wrote to the South African president, asking for the contract to be cancelled.

It was reported in the press that “LTE provides consultation for engineering companies, but was strangely awarded a tender for the construction of water and sewer reticulation of 2 689 stands in Sweetwaters’ Kanana Park Extension 6, even though it does not have the capacity to do the work. The board of directors were not aware they had landed the contract, but the letter of appointment was handed to its chief executive.”⁴

According to the report, “Majola [CEO of LTE] appointed Khato Civils, a construction company, to do the work as LTE did not have the capacity to execute the project. The contract had apparently been secured by Majola. Pillay [LTE chairperson] said Majola was mandated to secure contracts on behalf of the company. However, Majola had to inform the board and ensure that all the proper procedures were followed, because it could put the company at risk.”

Quite what went on at LTE remains uncertain. Pillay resigned as chairperson of the company that he had established after an armed robbery at his house shortly after his letter to the president.⁵ But LTE, Khato and their associates continued to cast a shadow over the water sector. The next time they appeared together in the public domain was in 2016, when then president Jacob Zuma asked the SIU to investigate two matters, LTE's Sweetwaters contract and the increasingly controversial project to supply water to the community of Giyani.

The Giyani Water Project- and the problems of BIG infrastructure

*How R502m grew to R2.7bn in a year.*⁶ That was the headline of the April 2016 *City Press* report which revealed that Zuma had ordered the SIU to probe the award of contracts for emergency works to supply water to Giyani. Two years later, with the department in a financial crisis, the Auditor-General's office told Parliament that there had been R2.2-billion of irregular expenditure on the project because contracts had been awarded irregularly. Meanwhile, DWS said that it would cost R10-billion to complete the project and bring water to all the people in this small town and its 90+ surrounding villages.

3 [SIU presentation to the joint sitting of the Portfolio Committee on Water and Sanitation and the Standing Committee on Public Accounts \(SCOPA\), 27 March 2018](#)

4 *Take back R200m tender!* <https://www.iol.co.za/news/politics/take-back-r200m-tender-1789219>

5 *Water wars expose a rotten system bleeding cash* <https://mg.co.za/article/2015-02-12-water-wars-expose-a-rotten-system-bleeding-cash/>

6 *How R502m grew to R2.7bn in a year* <https://citypress.news24.com/News/how-r502m-grew-to-r27bn-in-a-year-20160423>

MP Themba Godi, chairperson of Parliament’s standing committee on public accounts (SCOPA), called for a full parliamentary inquiry and for criminal charges to be opened, saying that the Department of Water and Sanitation had suffered a complete collapse under Mokonyane. But the case shows how one small incident of corruption before she arrived on the scene escalated into a monster once an enabling environment had been created.⁷

Giyani was established in 1960 to be the ‘capital’ of the Gazankulu ‘homeland’. Many of the municipality’s 250 000 people are from families that were forcibly moved to this arid area, with limited agricultural potential, as part of the apartheid government’s separate development policy. Almost half of working-age people are unemployed; most have an income of less than R800 per month. In 2011 almost 70% were reported to be indigent.

Their household water came from boreholes with limited capacity, and a small local dam. More water is available in the Nandoni Dam, 45km away, but whether this is needed has been questioned. In 2011, the Mopani District Municipality, responsible for the region, reported that Giyani had enough water for basic services but that it was not yet piped to all villages. It complained of vandalism, unwillingness to pay for water and noted that

“... Over-usage of water is generally observed in most of the areas, amounting to more than 150 litres per person per day in both towns and villages.”⁸

But when a drought in 2009 aggravated supply challenges, DWS took the opportunity to promote a so-called emergency scheme to bring water from the Nandoni Dam to the local Giyani water works at a cost of R247-million. Additional work was still needed to take the water to local village reservoirs from which the municipality was to pipe it to the households.⁹ In the meantime, another emergency project was started to fix local boreholes.

The DWS used a regional bulk infrastructure grant (a budget over which it had effective control) to fund the project and appointed the Mopani Municipality to implement it. In 2010, local company Tlong Re Yeng was appointed to build the Nandoni pipeline. The award was contested by an unsuccessful bidder since the winning company was only created after it had secured the tender and had no employees, assets or income. In 2012, a judge ordered that the contract be cancelled, describing it as “a fraud on the municipality” but, after a succession of appeals, the decision was only confirmed in 2014. Since some work had already been done, the Supreme Court of Appeal ordered DWS “to take such steps as may be necessary to determine the extent of the works necessary to perform remedial work and to complete the construction of the pipeline and the other works as contemplated in the aforesaid tender, **for purposes of publishing a tender for the said remedial work and the completion of the works**”.¹⁰

Instead, newly appointed minister Mokonyane directed Lepelle Water Board to act as her implementing agent. Contrary to the court order which required a tender for the remediation and completion of the works – although she told Parliament that she was complying with it¹¹ – she instructed Lepelle to appoint consulting firm LTE, with whom she had a previous relationship, which was done without any tender process^{12 13}. LTE in turn appointed two associated companies, Khato Civils and South Zambezi to build the project¹⁴

As questions were raised about why there was still no water in Giyani’s villages, DWS, Lepelle and LTE began other interventions, ‘rehabilitating’ boreholes, building ‘emergency reservoirs’, reticulation systems and new water treatment facilities – most of which was done without proper technical planning, budgeting or procurement processes.

7 <https://www.news24.com/SouthAfrica/News/mokonyane-lambasted-for-collapsing-water-dept-scopa-decries-reshuffling-and-calls-for-charges-20180227>

8 <http://www.mopani.gov.za/docs/idp/final%20Mopani%202018%202019%20Versions%203.pdf>

9 <http://www.mopani.gov.za/docs/idp/final%20Mopani%202018%202019%20Versions%203.pdf>

10 Esorfranki Pipelines v Mopani District Municipality (40/13) [2014] ZASCA 21 <http://www.saflii.org.za/za/cases/ZASCA/2014/21.pdf>

11 Minister on Media Reports on DWS bankruptcy/ Kgetleng, Water and Sanitation Committee, 3 March 2017 <https://pmg.org.za/committee-meeting/24078/>

12 <https://pmg.org.za/committee-meeting/27686/>

13 <https://briefly.co.za/10033-mokonyane-pushed-r27bn-deal-a-construction-firm.html>

14 <https://city.press.news24.com/News/siu-sues-giyani-water-contractors-for-r22bn-20181127>

By the time the Auditor-General of South Africa (AGSA) investigated, R2.5-billion had already been spent, projected to increase to R2.8-billion and beyond. The Auditor-General found that the contractors had been irregularly appointed, and that many of their claims were clearly false. When it transpired that the DWS did not have the funds to pay them, construction ground to a halt. Despite the vast expense, the main pipeline had still not been completed in 2019. Almost as an aside, the AGSA noted that there was, anyway, no plan to fund its operation.

Many projects were done without proper technical planning, budgeting or procurement processes

The Giyani project illustrates some of the many ways in which corruption works in the water sector. The questionable decision to build the Nandoni pipeline was facilitated by a drought emergency – and by the fact that the DWS had a pot of funds to dip into (see [RBIG – creating a corruption fund](#)). Although no funding was provided to operate the pipeline, the municipality was happy to have the infrastructure and, with it, opportunities to appoint its own favoured firms.

Instead of correcting the municipality's initial corruption, as ordered by the judge, the minister directed Lepelle Water to do the work. She allegedly took advice from controversial lawyer Luvo Makasi, former chairperson of the Central Energy Fund, to dodge direct responsibility for the irregular appointment of LTE.¹⁵ LTE in turn exploited the opportunity to grossly overcharge for the work done by their associates.¹⁶ While Mokonyane was legally entitled to give directives to water boards, her department should have been responsible for paying the costs incurred.

So a small incident of tender fraud triggered a frenzy of mismanagement and major corruption involving billions of rand. Both DWS and Lepelle Water have been deeply damaged, weakening their ability to discharge their functions. Local municipalities have been left with a dysfunctional system that they cannot afford to operate. Giyani's households are little better off than they were before. One unanswered question is where all the money went.

15 *Nomvula Mokonyane's 'Ben 10' calls the shots* <https://city-press.news24.com/News/nomvula-mokonyanes-ben-10-calls-the-shots-20181213>

16 <https://pmg.org.za/committee-meeting/27686/>



Nandoni pipeline construction

SAP –The perennial problem of ICT contracts

The Giyani case is complicated. The case of DWS’s SAP contract, on the other hand, is clear: a decision was taken to spend a huge amount of money buying an IT system for organisations that did not need it, without asking them first.

Once again, the details were first made public by the *City Press* which reported, in April 2018 that under former minister Mokonyane, the DWS had concluded a five-year contract worth R950-million for software services from the German SAP company. This was despite Mpho Mofokeng, one of the DWS’s two CFOs, warning in a letter to former director-general (DG) Margaret-Ann Diedericks that:¹⁷

- The department had already acquired ‘unlimited’ SAP licences for R178-million in 2013 and didn’t need more;
- The department’s own ‘water trading entity’ which was supposed to use the SAP system had not been consulted;
- The water boards that were supposed to use the system had not been consulted, even though they were likely using different software packages;
- Money to pay for the SAP licences was simply not available; and
- The procurement of the licences had not been planned for.

The *City Press*’s information came from an AGSA report, which the authors of this report have seen, which included further detail about how the minister and certain officials had simply ignored the department’s and government’s own structures and procedures. On the basis of that evidence, the AGSA had no difficulty in concluding that the acquisition was irregular.¹⁸

It was reported that when asked about the allegations, the DWS spokesman said that “... the acquisition of SAP was approved by the executive authority (Mokonyane) and was duly finalised by the Accounting Officer”.¹⁹

In September 2018, President Cyril Ramaphosa ordered the SIU to investigate this transaction. It was suggested that R35-million had been paid in kickbacks as part of the contract process. In November, the SIU informed Parliament that it would initiate civil litigation in the first quarter of 2019 and report to the president by 31 March 2019.²⁰

Reports suggest that action has been taken to recover payments from SAP but there is no information on action taken against those responsible. This may be a complicated process because SAP uses other organisations to sell and implement its products. In another corruption case, it explained that it uses ‘sales partners’ and that, if they are the ‘effective cause’ of SAP gaining a contract, they would get 10% of the contract value. In the DWS case, the successful bidder was EOH Mthombo, a unit that had been established to focus on public sector business, about whom more below.

While, in this case, the fingers point directly at Mokonyane, it is not often noted that she was simply following the example of her predecessors, Buyelwa Sonjica and the late Edna Molewa. When Molewa’s DG Maxwell Sirenya refused to authorise an IT contract that she wanted, he was fired. Sonjica had similarly dismissed DG Pam Yako over allegations (most of which were rejected by the tribunal that finally heard them when she appealed her dismissal), that she had irregularly favoured a particular IT company. The pattern of abuse of specialised services such as IT is one

17 *The big thirst hits Limpopo as R772m goes down the drain* <https://www.news24.com/SouthAfrica/News/r772m-down-the-drain-20180422>

18 Report of the auditor-general to the joint committee of inquiry into the functioning of the Department of Water and Sanitation: Challenges facing the water and sanitation portfolio. 23 March 2018. https://www.corruptionwatch.org.za/wp-content/uploads/2020/02/180327AGSA-Challenges_Water_Sanitation.pdf

19 *Nomvula Mokonyane did not sign R1bn contract, says spokesperson.* <https://www.iol.co.za/news/politics/nomvula-mokonyane-did-not-sign-r1bn-contract-says-spokesperson-16934674>

20 SIU investigations: progress report; Department of Water and Sanitation challenges: Treasury briefing, with DWS Minister. <https://pmg.org.za/committee-meeting/27686/>

characteristic of corruption in the water sector in which business has actively facilitated misconduct, as is discussed in more detail below.

Lesotho Highlands Water Project

Before information technology became such a money-spinner, construction projects were the traditional magnet for corruption because they involve large amounts of money, are complex and difficult to monitor, and because, since each one is different, they are difficult to benchmark against each other in relation to cost. The control of such projects has long been a target for capture because it opens many opportunities for substantial procurement and contract management abuses. So the various phases of the Lesotho Highlands Water Project (LHWP), one of the largest construction projects in Southern Africa, offer a further example of persistent abuse of power for personal gain at the expense of the public interest.

The LHWP provides some of the water to over 15-million people in South Africa's inland economic hub. It diverts water that would flow into the Orange River in South Africa to flow instead into the Vaal tributary, which passes just 50km from Johannesburg. Instead of pumping the water 700km uphill, it flows down under gravity to where it is needed, halving the cost of making water available.

While the project concept is simple, its scale is huge, costs are high and its management is complex. The two countries co-operate in terms of a treaty which shares the savings from the project between the two governments.

In the 1990s, the first phase of the project provided a textbook case of corruption in large public sector construction projects.^{21 22} More recently, it has provided an insight into the way in which attempts to capture the management structures and gain control over procurement and contract management issues can disrupt and delay an important public project and put a substantial part of South Africa's economy at risk.

One consequence of the corruption in Phase 1A of the LHWP is that substantial efforts were made to avoid further corruption in Phase 2, the construction of the Polihali Dam. However, as the minister now responsible from the South African side, Mokonyane actively sought to change the procurement requirements for the project. These arrangements had been established bilaterally by the two governments, in consultation with the World Bank and other potential funding agencies.

Mokonyane's first step was to replace the leader of South Africa's delegation on the project with her own nominee. She publicly stated that her aim was to ensure that the work would not go to "the usual companies", ignoring the fact that the design and supervision of the Lesotho infrastructure was highly complex and required international co-operation between a number of leading companies. At the same time, she allegedly worked with directors of LTE, her favoured consulting company, to find ways to change the project specifications, to enable them to participate in the re-design of the project.

As *City Press* reported at the time:²³

“• In March 2015, Mokonyane's director-general, Margaret-Ann Diedricks, demanded that Dr Zodwa Dlamini – South Africa's chief delegate to the water commission – halt the project's procurement processes, offering no reasons for this.



21 LL Thetsane and GH Penzhorn SC, Case Study: The Lesotho bribery prosecutions, presented at Conference on the Protection and Optimization of Public Funds - the Cooperation between National and International Authorities, Rabat, May 14-16, 2007

22 Fiona Darroch (2003) The Lesotho corruption trials — A case study, Commonwealth Law Bulletin, 29:2, 901-975, DOI: 10.1080/03050718.2003.9986648

23 Nomvula Mokonyane's Watergate. <https://city-press.news24.com/News/nomvulas-watergate-20160710>

- LTE boss Thulani Majola met with Lesotho officials to demand tenders, freely dropping Mokonyane’s name in the meetings.
- In October, Mokonyane removed Dlamini – who has 10 years of experience in water mega-projects – from the project, offering no reasons for this. She was replaced by Gauteng’s former MEC for infrastructure development Bheki Nkosi, who served under Mokonyane when she was Gauteng premier, and worked alongside her in ANC provincial structures.
- In April 2015, Maseru’s government removed Charles Putsoane, its most senior and experienced official from the project, citing ‘incompetence and insubordination’.
- Dlamini and Putsoane were removed after meeting with LTE Consulting and refusing to give the company tenders without going through the formal process.”

Although Zodwa Dlamini was reinstated after an intervention by the Public Protector, she chose to leave after receiving a full payout for her outstanding contract. But the Public Protector’s report confirmed that it was disagreement about procurement policy that led to her departure.

There were always going to be opportunities for South African businesses. Since the LHWP’s first phase, the procurement rules always required participation from both countries. What they do not allow is for ministers from either South Africa or Lesotho to decide who gets which job. And this was what Mokonyane apparently wanted.

In 2018, the LHDA, the Basotho organisation which leads construction of Phase 2, organised road shows in South Africa to brief local contractors on the many opportunities the project would offer. Their spokesman concluded by warning his audience that they shouldn’t think that they could get work by going to Maseru and buying expensive drinks for project staff. There was a formal procurement process and they should follow it.

LHWP2 is back on track for now. However, even if procurement proceeds cleanly and smoothly, Mokonyane’s interventions have further delayed an already delayed project. The result is that the region served by the Vaal system and Lesotho’s dams will be at risk of serious supply restrictions if there is a drought before 2026, the current optimistic project completion date. Already, new developments in major cities have been halted as a result. The current and potential economic impacts are significant.

The War on Leaks ends in defeat

Because projects like the LHWP have been delayed, and because South Africa is a water scarce country, it is vital that South Africa’s major cities reduce their water losses so that, given their limited supplies, they can cope with growing demands. When, in 2018, young protesters threatened burn public buildings and trash government offices, attention was focused on the expensive failure of DWS’s War on Leaks project.²⁴

From 2015 to 2019, over R3-billion was spent on training 10 000 artisans and ‘water agents’, supposedly to help reduce water losses. However, the War on Leaks has neither reduced water losses nor created jobs. Mokonyane and her senior officials ignored the country’s well-recognised capabilities to implement effective water loss control programmes. The approach taken instead appears to have been guided by political considerations – offering temporary training jobs - rather than reducing water losses, which is a formal priority for municipal managers.

Pipes that leak water are effectively leaking money – the cost of the water, treatment chemicals and energy for pumping. Further financial leaks occur when water gets to users but is not accounted or charged for. Reducing this non-revenue water cuts costs, delays the need for new (expensive) supply investments and improves the quality of service to water users.

Politicians understand this logic. So in 2009, then president Jacob Zuma made action on water leaks a national priority; in 2010, he set a target for the reductions to be achieved, echoed by the 2012 National Development Plan (NDP). In 2013, Minister Edna Molewa announced a national

24 Follow up information to War on Leaks Trainees. <http://www.randwater.co.za/WarOnLeaks/Knowledge%20Hub/Follow%20Up%20Information%20to%20the%20WOL%20Trainees.pdf>

Lesotho Highlands Water Project – Katse Dam



campaign, supported by organised business's Strategic Water Partners Network (SWPN). But it was Nomvula Mokonyane who formally launched the War on Leaks shortly after she was appointed as minister of water and sanitation in 2014.

Water loss reduction projects are about improving the management of water systems. Properly run, they often pay for themselves through the savings they achieve - contractors are typically paid the value of one or two year's savings. This was how the project was originally conceived by the DWS's technicians. But Mokonyane ignored technical guidance and the advice of her SWPN partners and decided that her programme would simply train 15 000 artisans to work in municipalities to reduce water losses. At best, this was unbelievably naïve. While water loss reduction programmes need people on the ground, they have to be managed as part of a planned and structured effort.

As with the Giyani Water Project, Mokonyane distributed DWS funds to other agencies, bypassing financial management controls. Rand Water was directed to recruit and manage the trainees – they employed nearly 100 people to run this nation-wide programme. The cost of trainees' stipends and administration amounted to over R1.7-billion.

Meanwhile, the Energy & Water Sector Education Training Authority (EWSETA), the official training authority for the electricity and water sector, was asked to manage the training. This was initially supposed to be for artisans²⁵. But it proved impossible to recruit and train so many people to national standards and the Department of Higher Education and Training decided that their Technical Vocational Education and Training colleges should not participate. So “the EWSETA then re-directed their focus toward accrediting private Skills Development Providers for the War on Leaks programme”.

Overnight, the EWSETA became the second largest training authority in the country. In a murky process, EWSETA appointed Boikgantsho Consulting and Events (BCEI), a small company with no substantial track record in the field, to manage the programme. It has not been explained how BCEI procured the trainers and 89 training venues at a cost of almost R2-billion. Some of the ‘training institutions’ chosen did not even have chairs and desks for their trainees.

As the programme proceeded, it emerged that the municipalities where the trainees were supposed to find jobs had not been consulted. It was difficult even to place trainees for the practical experience that they needed to graduate. As one training expert commented: “a placement programme that first trains and then goes to look for host institutions will forever battle to find placements”.²⁶

Challenges were now accumulating. In 2017, Rand Water suddenly received a “withdrawal directive” and was told that Mhlathuze Water, a small water board in northern KwaZulu-Natal (KZN), would take over administration of the 5 000 trainees in the third phase of the programme. (The chairperson of Mhlathuze Water was the controversial Dudu Myeni, with whom Mokonyane was working to land a bigger fish - see [Mhlathuze-Mgeni merger rings alarm bells](#)). Rand Water resisted and in March 2018, informed Parliament that DWS must ensure a proper handover to manage ongoing staff and contractual commitments.²⁷ But Mhlathuze had already awarded a R98-million contract to another little-known training company; sensibly, learning from Rand Water's experience, the contract was subject to confirmation of funding from DWS.



Municipalities need to take a systematic approach to reduce their water losses. They must find out how much water they put into their distribution systems and where it goes. Physical losses, through leakage in the public distribution system can be reduced by finding and fixing individual leaks as well as by lowering the pressure in the pipes. Distribution pipes may be replaced once the worst zones have been identified.

Where water users are not registered on administrative systems, just regularising and metering their connections can significantly reduce water use. In the 60% of households who do not pay for water, fixing leaking taps and toilets which often account for much of the water ‘used’, further reduces physical water losses.

25 EWSETA 2015/16 annual report. <https://ewseta.org.za/annual-reports/>

26 WoL Evaluation literature review, page 10

27 Rand Water Board & Sedibeng Water Board 2016/17 Annual Report, with Minister and Deputy Minister. <https://pmg.org.za/committee-meeting/25939/>

Before this transfer could happen, the programme collapsed. The AGSA found that it had not been budgeted for and that money was being diverted, illegally, from other DWS programmes. DWS could not pay the trainees and Rand Water, already owed half a billion rand, refused to advance any further funds. By 2018, DWS was effectively bankrupt; at the end of 2019, it was still struggling to pay outstanding debt and restart essential programmes.

Many questions remain. Most of the trainees graduated as so-called water agents whose qualifications are not formally recognised, even after they completed practical placements. Thulas Nxesi, minister of employment and labour, recently warned (at a Southern African Clothing and Textile Workers' Union conference in September 2019) that huge amounts of funding were flowing to private training providers with little control on quality – was this another example?²⁸ The majority of trainees were 'nominated' by individual municipalities rather than properly recruited and opposition parties claimed that this was to distribute political patronage.

There is now little to show for the expenditure. Trainees received some stipends and training, albeit mostly of questionable quality. EWSETA must still explain how it spent R2-billion on trainers and venues and how it assured the value of the qualifications provided.

Over 20% of DWS's annual budget of close on R16-billion (and a whole year's worth of the non-capital budget of around R3-billion) was diverted from its intended purposes. This severely disrupted many critical regulatory activities. Critically, revenue from water sales was not paid to the state-owned Trans-Caledon Tunnel Authority (TCTA), which is responsible for meeting the loan commitments on large infrastructure projects such as the Lesotho Highlands Water Project. This ill-discipline threatened TCTA with financial failure and could make it more difficult for them to raise investment funds for future water projects.

If there had been more attention to stopping leaks and less to giving business to friends, a great deal of money would have been saved and young people would have had the opportunity to do useful work. One of the corrosive impacts of corruption is that it diverts energy from building solid organisations that do a good job and making public services work better.

Drop a block

In some of the poorer townships of Gauteng, 70% or more of water provided is lost. Throughout the night, flow into those areas hardly reduces despite the fact that no one is actually using water. It is being lost to leaks, particularly in the households themselves rather than in the street.

The War on Leaks trainees could usefully have been deployed to go house-to-house and do basic plumbing repairs as part of a larger programme of water loss control. The municipalities could have saved more than enough to pay for the costs of fixing the leaks. But, because of the failure to implement a coordinated programme, the trainees lost job opportunities, water continues to flow to waste, and the municipalities continue to lose money.

One useful activity in which some trainees were involved was the 'dropping a block' programme. This reduces the volume of water used for flushing toilets by putting a brick-sized plastic block into their toilet cisterns. But why were the trainees used for this specific activity?

It transpires that the DWS distributed just over a million plastic blocks at a cost of R161 424 000 – R161 each for a hollow plastic block, the size of a brick, filled with sand. The minister had directed Sedibeng Water to procure the blocks.²⁹ This was another project on the AGSA's list of the department's irregular projects that were not budgeted for.³⁰

28 DWS unauthorised, irregular, fruitless & wasteful expenditure: hearing, with Minister and Deputy Minister. <https://pmg.org.za/committee-meeting/27688/>

29 [Report of the auditor-general to the joint committee of inquiry into the functioning of the Department of Water and Sanitation: Challenges facing the water and sanitation portfolio, 23 March 2018](#)

30 Department of Water & Sanitation financial position & contested audit: Treasury & Auditor General briefing. <https://pmg.org.za/committee-meeting/26328/>



Once again, who benefited from providing a million extremely over-priced plastic blocks? How they were selected? This information has not yet been revealed.

Blue, Green and No Drop reports - dealing with awkward monitoring

In 2008, DWS announced an important initiative to support its oversight of municipal water supply and sanitation performance. It introduced the Blue Drop and Green Drop monitoring reports. As explained by then-minister Lindiwe Hendricks,

“... the first process would be a Blue Drop certification, which would be awarded to municipalities that complied with 95% of the criteria set for effective drinking water management. The Green Drop certification would be awarded to municipalities that complied with 90% of the criteria set for wastewater management.

“... the aim of the certification was to build the confidence of the citizens and tourist. It would indicate that consumers would be able to drink tap water with confidence, and also indicate that wastewater was properly managed and discharged in a sustainable and environmentally acceptable manner.”³¹

(A No Drop report on the extent of water losses was added to the monitoring portfolio in 2014, in partnership with the Strategic Water Partners Network)

The first Blue Drop report was published in 2009 and by 2010, 95% of all municipal water service authorities were participating. Many of those that achieved a Blue Drop, with a rating of over 90%, proudly advertised it in their publicity material. But efforts to name and shame municipalities that were not complying with regulations were not appreciated. And opposition politicians made political capital of the first Green Drop report, which showed that the majority of South Africa’s municipal wastewater works were dysfunctional.

31 *Dwaf unveils new water certification scheme for municipalities.* <http://www.engineeringnews.co.za/article/dwaf-unveils-new-water-certification-scheme-for-municipalities-2008-09-11>



blue drop
CERTIFICATION
drinking water quality
REGULATION

As a result, political resistance to publication of the results grew. In 2013 the Green Drop release was cancelled 'pending submission to Cabinet'. The last, abbreviated, set of reports was released in 2014. Subsequently, owing to a reported shortage of funds, no further reports have been published.

This was the period in which substantial resources were directed to projects such as Giyani and War on Leaks. Continued monitoring would have revealed that, despite the expenditure of billions of rand, water supply in Giyani was still grossly deficient and that water loss had not been significantly reduced.

The bucket toilet tender stink

Much of this report focuses on water supply issues since they are often the most immediate priority for everyone from poor households to big businesses. But sanitation is an integral part of water services and, in households with waterborne sanitation, it is one of the biggest water uses. It is important for sanitation to be water efficient and for wastewater to be safely disposed of.

However, sanitation provision has also been prone to corruption and the strategy used has been depressingly familiar. A priority – or even better, an emergency – is identified and an approach to address it is proposed that is often more concerned with opportunities for profit than with effective solutions. If communities are lucky, their sanitation will be improved – but it does not always follow.

Bucket toilets are a good example. There is general agreement that the manual collection of human waste from individual households is unacceptable. In the past, it was used in urban areas with no sewerage system and where pit latrines are not acceptable. But a national political decision was taken, correctly, that bucket toilets must be eradicated. And that has created an apparently endless source of profits for well-connected businesses.

A 2015 investigation chronicled how, in the Free State, politically well-connected construction company Babereki Consulting Engineers was appointed in 2013 by the Bloem Water board, without following formal procurement procedures, apparently on instruction of DWS.³² The firm was already controversial after having been removed from a contract to build a new hospital in Kimberley, because of alleged poor performance – ahead of that contract, it was reported that Babereki's CEO Tshego Motaung had donated more than R1-million at a 2008 Jacob Zuma fundraiser in 2008.³³

In court action against DWS and Bloem Water, Babereki stated that they had invoiced Bloem Water for R50-million and that Bloem Water had said it was waiting for funds from DWS. Babereki left the site and Bloem Water was sidelined. Shortly afterwards, DWS chose Vharanani Properties from a previously established panel of 'preferred contractors' to complete the project at a cost that had now risen to R994 150 000. This was the same company that had taken over the Giyani pipeline contract. Its owner, David Mabilu, has a wide range of business interests from property to media (and the collapsed VBS Bank), a flamboyant lifestyle, and a record as a political funder.

Despite the expenditure of hundreds of millions of rand, it is reported that many provincial households still have no alternative but to use buckets. Yet one thread runs consistently through the process: large contracts have been arbitrarily allocated to companies known for their record of political funding. In this case, the AGSA told Parliament's water and sanitation committee that money had been taken from water supply projects to fund the never-ending bucket eradication project.³⁴

Mhlatuze–Mgeni merger rings alarm bells

Given the experiences described above, there is growing awareness of the risks posed by institutional capture in the water sector. So alarm bells rang when a merger was proposed between Umgeni Water and Mhlatuze Water in KZN. There were fears that the proposal was not being driven by efficiencies to be gained from rationalisation. Umgeni, the country's second largest water

One thread runs consistently through the process: large contracts have been arbitrarily allocated to companies known for their record of political funding

32 Protector asked to sniff out toilet tender stink. <https://mg.co.za/article/2015-04-23-protector-asked-to-sniff-out-toilet-tender-stink>

33 Rape claim against ANC backer. (Fourth paragraph from end) <https://www.iol.co.za/news/politics/rape-claim-against-anc-backer-426471>

34 Department of Water & Sanitation financial position & contested audit: Treasury & Auditor General briefing. <https://pmg.org.za/committee-meeting/26328/> and <https://pmg.org.za/files/180509agsa.pdf>

board, has long been targeted by unscrupulous business people seeking to partner with public officials to make a quick buck.³⁵

In 2016, Dudu Myeni, the controversial chairperson of Mhlathuze and head of the Jacob Zuma Foundation, had been found by courts to have overstayed her legally allowed tenure in Mhlathuze and had to vacate her position. The subsequent concern was that the merger of Umgeni and Mhlathuze would allow Mokonyane to appoint Dudu Myeni as chairperson of the merged entity instead and thus gain control over Umgeni's sizeable project portfolio and financial reserves. To further facilitate the merger and perhaps a wider plan for the two institutions, Mokonyane had dismissed the Umgeni board and appointed an acting chief executive accountable only to herself.³⁶

The threat to the financial reserves led to the merger being halted and the board's governance structures being restored. To fund its operations in the late 1990s, Umgeni had borrowed billions of rand by issuing bonds. The bonds had been bought by major financial institutions who were concerned that, under the new arrangements, interest payments might not be met. Future Growth, a subsidiary of financial giant Old Mutual, warned Mokonyane that it would block the merger to protect its interests, part of a wider effort by the financial sector to curb mismanagement in state-owned enterprises.^{37 38}

Fears that the attack on Umgeni Water's governance was an attempt to influence the award of tenders were reinforced when, in 2018, it was alleged that a R220-million security contract had been irregularly awarded by Umgeni Water to an ANC-linked security company. Controversial 'piggy-backing' procurement provisions (see below) were used to give the contract to Reshebile Aviation and Protection Services without a tender. The contract was awarded on the basis of Reshebile's existing contract with the Airports Company of South Africa (ACSA); ironically, that contract was itself controversial because it had been found that Reshebile did not qualify to participate in ACSA tender processes.^{28 39}

Events like these only served to confirm that the motive for many of the interventions in water board governance and management was to gain control for irregular purposes. They also showed that, once control has been gained, formal procurement rules provide limited safeguards against misappropriation. What was effective were threats by financial institutions to bring down the whole structure by withdrawing their financial support.

Raising Clanwilliam Dam – grow jobs and economy or support patronage?

The stop-start project to raise the Clanwilliam dam is an example of how capture can delay achievement of public goals while opportunities are sought to achieve private benefit. The 85-year-old Clanwilliam Dam does not meet current safety standards and it has long been proposed that, during rehabilitation, it could usefully be raised. The extra capacity would increase the yield of the dam by about 40%, allowing over 5 000 ha of additional land to be irrigated and creating almost four thousand new jobs.

The DWS's under-employed construction unit was able to do the job and the project would have enabled the department to provide much-needed on-the-job training to its staff. After many delays by previous ministers, Mokonyane announced in her 2015 budget speech that the project would start. The DWS team moved onto site and began preparations; surrounding land was acquired and the Cape Town-Namibia N7 national highway was diverted to make way for construction.

35 Misconduct at Umgeni water board – Kasrils. <https://www.iol.co.za/news/politics/misconduct-at-umgeni-water-board-kasrils-68117>

36 Acting Umgeni Water chief executive appointed. <https://www.news24.com/SouthAfrica/News/acting-umgeni-water-chief-executive-appointed-20170627>

37 Water and sanitation minister's 'meddling' could cost SA R3bn. <https://www.news24.com/SouthAfrica/News/nomvulas-meddling-could-cost-sa-r3bn-20170923>

38 Umgeni Water in R220m tender scandal. <https://city-press.news24.com/News/mon-3pm-piggybacking-the-way-to-get-the-job-20181224>

39 Bidvest Protea Coin (Pty) Ltd v Airports Company of South Africa. <http://www.saflii.org/za/cases/ZAGPJHC/2017/110.html>

Then the minister abruptly stopped the project. She had decided to bring in external contractors and some familiar names were raised. In 2017, National Treasury was asked to approve a new budget and informed that it was now going to be built by external contractors “as a result of the need to accelerate the project”. It was suggested this was because the departmental team did not accept proposals to bring in her preferred providers for some of the highly specialised specialist services on this technically difficult project.

In 2018, following Mokonyane’s departure, the new minister Gugile Nwinti instructed the DWS to revert to the original approach. Construction has begun again – a year after Mokonyane announced that it would be concluded. Completion is now scheduled for 2023.

When the project was relaunched, an indication of the issues at stake was provided by Helen Zille, then premier of the Western Cape, who claimed: “Over 2 000 people were bussed in for the launch, with catering and transport contracts for the event being awarded to the ANC’s regional treasurer, an ANC activist and beneficiaries of crayfish quotas.” According to Zille, ANC speakers demanded that they be awarded contracts on the project and that the long delay had been due to pressure from ‘tenderpreneurs’ seeking contracts.⁴⁰

This may reflect a wider challenge, discussed below, where local groups demand participation in construction projects and take action to obstruct work if they are not involved or paid off. A number of important projects in other sectors have been delayed or stopped as a result, including a major bridge on the N2 highway in the Eastern Cape and parts of the Rea Vaya Bus Rapid Transport network in Johannesburg.

40 Tenderpreneurs circle Clanwilliam dam wall project - Helen Zille. <https://www.politicsweb.co.za/politics/tenderpreneurs-circle-clanwilliam-dam-wall-project>



Clanwilliam Dam

But the cost of responding to these pressures, perhaps with the intention of also benefiting selected service providers, can be measured in development opportunities lost. In Clanwilliam, it was thousands of jobs in agriculture. But it also represented a huge waste of departmental funds and human capabilities, as the construction team stood idle for more than a year while across the country, communities were crying out for assistance.

TCTA and the Mzimvubu project

Happily, efforts to capture institutions in order to promote inappropriate projects are sometimes prevented. But this does not happen without conflict and casualties.

The Trans-Caledon Tunnel Authority (TCTA) was originally established to manage South Africa's contribution to the Lesotho Highlands Water Project. It was then decided to use its capabilities inside South Africa to develop large water resource infrastructure on a 'project finance' basis where project beneficiaries could fund the costs through tariffs. It promoted the Berg River Dam which helped Cape Town and the Western Cape survive the recent drought; the Vaal River Eastern Sub-system Augmentation Project, which would increase the security of water supply to Sasol and Eskom power stations; and an intervention to manage acid mine drainage.

Given its focus on large capital projects, it was inevitable that the TCTA would come under political pressure. It is vulnerable because, as with the water boards, the minister of water can direct it to undertake specific tasks. Mokonyane made a number of attempts to direct TCTA to fund inappropriate projects. Perhaps the most audacious were her efforts to force the TCTA to take a loan from a Chinese bank to build the Mzimvubu dam.

The Mzimvubu development shows how projects in the water sector can go off the rails if political leaders have the wrong objectives and incentives. The Mzimvubu is South Africa's third largest river, flowing almost entirely through the Eastern Cape, one of the country's three poorest provinces. Its waters flow into the Indian Ocean at Port St Johns, almost entirely unused.

For decades, efforts to find ways to use the water productively have been stymied by geographical challenges such as deep valleys, with little irrigable land. The area also receives sufficient rain for dryland farming which, although less productive, is cheaper and easier than irrigation. Hydropower development was rejected because of environmental impacts. It seemed that the only use for the water would be to export it to cities outside the basin which would only be needed some decades in the future.

In 2013, a review of 17 options for integrated development considered economic activities from agriculture to tourism, and a new dam at Ntabelanga, between Maclear and Tsolo, was proposed. It could generate a little hydropower, irrigate 2 800 hectares of reasonably fertile soils and supply a large regional water scheme.



Mzimvubu river mouth

But its feasibility was challenging. The water would be expensive and agriculture would only be viable if commercial farms produced high-value crops, displacing existing residents from their traditional land. The provincial agriculture department did not support this, saying that far more people could benefit with less funds in other places and that commercial farming schemes on traditional land had generally failed. Eskom was not interested in the small amount of power offered because of its high cost. And cheaper sources are available for domestic water supply.

However, politicians who were enthusiastically promoting the scheme, promising jobs and development, disregarded the important detail – that it could only be viable if power, agriculture and potable water were developed together. Minister Mokonyane took advantage of the 2015 China-South Africa summit to instruct TCTA to sign an agreement with the China Communications Construction Company which offered a loan from a Chinese bank. But it was clear from the outset that the beneficiaries of the project, as structured, would not be able to pay operational costs, let alone repay a loan. And National Treasury refused to guarantee the loan since it would add to the country's budgetary burden.

Despite this, Mokonyane led a delegation to China in 2016, including most of the board of TCTA, with the intention of proceeding. TCTA's board, aware that the project could not be financed through its normal project finance methodology, explicitly instructed the TCTA CEO (a Mokonyane nominee) not to sign any loan agreement. So, despite huge pressure from the minister, no loan was signed. TCTA's latest annual report states that preparatory work has now stopped as funding is not available. Fortunately, because TCTA is dependent on finance from the private capital markets, the minister could not simply dismiss the board without undermining private sector funding sources for other major projects.

Mokonyane's determination to proceed might be explained by the fact that back in 2015, DWS had appointed Pro-Plan, a small consulting company with no relevant experience, for the "Design, construction supervision and quality control for uMzimvubu Water Project". Pro-Plan is based in Mokonyane's home town in Gauteng; it had worked for her while she was in the Gauteng provincial government and was also nominated by DWS to oversee another multi-billion-rand white elephant project to be implemented by the Sedibeng Water Board.

The project remains on the political agenda, not least perhaps because Pro-Plan has allegedly been paid almost R500-million for preparatory design work to date, although there is currently a contractual dispute and it has been suggested that the company's appointment was irregular in the first place.

Both ministers who succeeded Mokonyane have continued to make the political case for the dam to be implemented. But, so far, they have recognised the need to ensure that they have willing partners in the agriculture and power sectors. And they have been prepared to stay within the financial management system to do it.

2.2 THE ATTRACTION OF LARGE CAPITAL PROJECTS

Corruption and mismanagement in the South African water sector cannot be attributed to just one powerful person although Nomvula Mokonyane certainly showed that one determined individual can have a devastating impact. The more traditional view, that the large sums of money involved in construction projects attract corrupt people, continues to be true as the examples presented below demonstrate.

What these examples also highlight, however, is the danger that the potential corrupt gains from large projects may lead to projects being promoted that are inappropriate or indeed unnecessary. On the Mzimvubu project, Mokonyane provided a useful example – but some of the many others are outlined below. As these show, the battle for corrupt gains often starts long before contracts are signed.

What these examples also highlight is the danger that the potential corrupt gains from large projects may lead to projects being promoted that are inappropriate or indeed unnecessary

Mangaung and the Gariiep pipeline

Mangaung, formerly Bloemfontein, capital of the Free State province and seat of the country's Supreme Court of Appeal, currently draws water from two principal sources, the Modder and Caledon rivers. While these sources have had problems, planning studies have shown that, if

properly managed, they should be adequate for years to come, particularly if the city reduces its water losses.

However, whenever there is a supply problem, attention turns to the Gariep dam 200km away on the Orange River. It has long been suggested that the city should build a pipeline to bring water from the dam although the costs of construction and pumping the water 200 metres uphill would substantially increase water costs.

In 2016, Mangaung Metro Municipality appointed GladAfrica, a consulting engineering and project management firm, to undertake a feasibility study of the pipeline. In its integrated development plan, the municipality indicated that it hoped to leverage financing through an agreement with national government.

Meanwhile, LTE Consulting, which has figured in many other cases, was contracted by Bloem Water, which falls under Department of Water control, to do a feasibility study of the same project, at a cost of R17 459 000.⁴¹ This followed an announcement by Mokonyane in her 2016 budget speech that “The Department has already commenced with feasibility studies working towards conveying water from Gariep Dam to Mangaung through the construction of the Caledon Bloemfontein potable water supply scheme.”⁴²

To date, no decision has been taken. The technical managers continue to maintain and renovate the existing scheme, to keep it operational. In this case, the logic of the department’s own planning work, together with the very limited funding available and the fact that the proposed pipeline would likely double the cost of water to the city seem to have stopped another ambitious plan to implement an unnecessary project.

As reported to a parliamentary committee, “The Gariep pipeline was started in 2004, and was then priced at R2-billion. The Metro had to compete with Water and Sanitation It was agreed that Water and Sanitation would implement, but the price had escalated to R8-billion, and the Department did not have money.”⁴³

The fact that two factions were competing to reap the benefits from its promotion may, perversely, have helped since the project will only proceed if both parties can agree. Once again though, this suggests that decisions are driven as much by personal interests as by formal planning and procurement processes.

Nelson Mandela Bay – How desalination dreams derailed city’s water security

The experience of Nelson Mandela Bay Metro Municipality is similar to that in Mangaung except that delays due to efforts to promote an inappropriate project have created a real crisis. Cape Town became globally famous for its threatened Day Zero when all residential taps would be turned off, although that was never really a likely prospect.

At the same time, the Nelson Mandela Bay metro was facing similar challenges. A long drought had depleted the city’s water reserves and they were, nominally, trying to reduce domestic consumption to the same 50 litres per person per day as Cape Town had enforced in 2018.⁴⁴

As in Cape Town, the problem was less about the drought and more about the failure to do what was necessary to ensure the city’s water security, since droughts occur regularly in South Africa. Unlike Mangaung, Nelson Mandela Bay metro already has access to extensive Orange River water resources, transferred through an apartheid-era system. All that was needed was a 40km pipeline to link to the city’s Nooitgedacht treatment works. In 2006, the city had published a 20-year water plan which stated that the Nooitgedacht scheme would be needed by 2015. So why in 2017 was its water still not reaching the city?

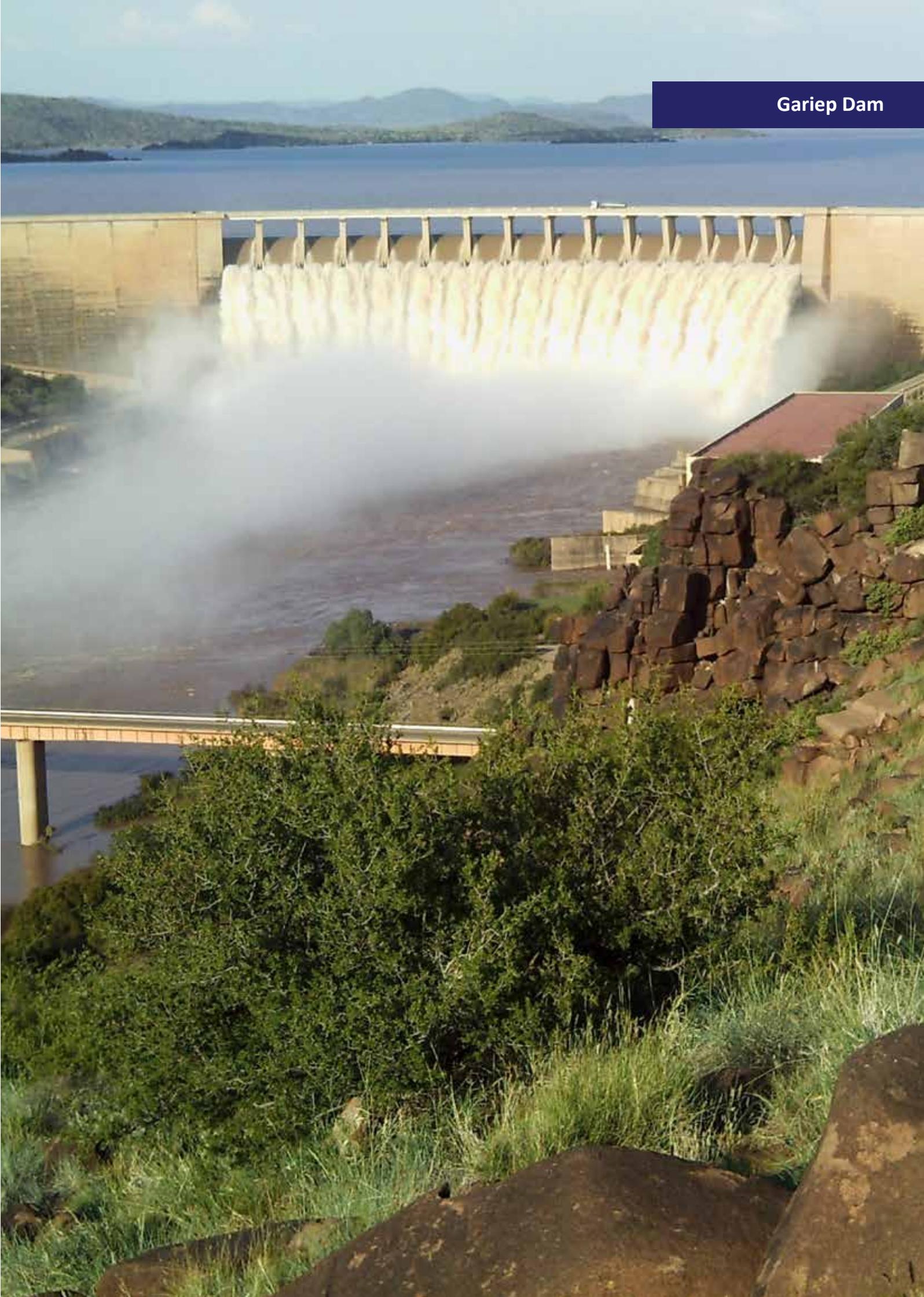
41 List of consulting firms currently contracted to the entities. http://pmg-assets.s3-website-eu-west-1.amazonaws.com/RNW1099-2018-05-29-Annex_C.docx

42 Water and Sanitation Dept Budget Vote 2016/17. <https://www.gov.za/speeches/address-minister-water-and-sanitation-ms-nomvula-mokonyane-occasion-budget-vote-number-36>

43 Mangaung & eThekweni Metropolitan Municipality briefing, NCOP Finance, 21 August 2018. <https://pmg.org.za/committee-meeting/26870/>

44 Port Elizabeth’s dams at lower level than Cape Town. <https://www.aljazeera.com/news/2018/08/port-elizabeth-dams-level-cape-town-180810092406757.html>

Gariep Dam



Other agendas were in play. Around 2005, a group of local entrepreneurs and leading municipal officials decided to promote the construction of a desalination plant.^{45 46} They were not deterred by the extremely high cost of water from this proposal, many times more than that of readily available Orange River water. This would have involved the kind of private sector investment that creates many opportunities for individual profit at the public expense. And when a national official asked about the challenges of financing the proposed project, the Singaporean promotor simply said, not to worry, it was ‘all in the bag’ [pers comm 2019].

But the desalination project required either a bankable undertaking from the municipality to buy the water or a central government subsidy. The municipality’s financial track record was too weak to convince lenders while efforts to obtain financial guarantees or emergency drought funding failed to persuade a sceptical national government. Local and national authorities finally decided to proceed with the Nootgedacht scheme but, after years of delay, funds still had to be found. As a result, when the region suffered yet another drought, it had to introduce extreme water restrictions.

Efforts to promote an unnecessarily expensive scheme for the wrong reasons left the city vulnerable. The municipality was notorious for corruption.

So efforts to promote an unnecessarily expensive scheme for the wrong reasons left the city vulnerable. The city’s municipality was notorious for corruption. The book *How to steal a city* describes how no project would advance in Nelson Mandela Bay unless someone in the leadership benefited.⁴⁷

The repeated water restrictions that the city suffered saw industries close for lack of water and further jobs lost in agriculture. By 2016, a black market had emerged in water stolen from swimming pools by the tanker-load. In September 2019, with the critical Nootgedacht infrastructure still not in place and drought threatening the region once again, organised business warned of a “jobs blood-bath”.⁴⁸

This is the cost of corruption which blocks projects from which municipal leadership cannot benefit and it highlights the need to prevent unethical local leadership from capturing control of institutions.

Mpumalanga’s municipal budgets – Hijacked or rescued?

In 2012, DD Mabuza, then premier of Mpumalanga and now deputy president, expressed his concern about the state of municipal water supply services in his province. He said that the province’s district municipalities were not making adequate progress with investments to improve the situation and were indeed returning some of their budget allocations to National Treasury.

So he announced that his provincial government would take control of their investment funds. At a meeting attended by almost 100 local and provincial political heads, officials and technicians, he said that the municipalities concerned should transfer their funds for water infrastructure development to the Mpumalanga Economic Growth Agency (MEGA) which would now implement water projects. While he recognised that these funds had been allocated to the municipalities, he warned that if any mayor disagreed with this proposal, they could have a discussion in another place (understood to be the provincial ANC office).

While the approach was distinctly novel, the stated motive seemed reasonable. Since local government elections were due in two years, the premier wanted to ensure fast progress in improving services since reliable water supplies were a high priority in many constituencies. Depending on one’s standpoint, this was either a dramatic initiative to address an important problem or the brazen hijacking of municipal budgets.

The test would be whether the intervention yielded the promised results. On this count, the benefits were less obvious. A review of the projects to be funded (and for which designs were ready) found many worrying anomalies – including treatment plants without water sources, reservoirs without supplies to fill them, and many pricing anomalies.

45 *Mystery PE man in massive Coega deal.* <https://www.environment.co.za/east-cape-wild-coast-south-africa/mystery-pe-man-in-massive-coega-deal.html>

46 *GE to build innovative desalination plant in South Africa.* <https://www.reliableplant.com/Read/6504/ge-to-build-innovative-desalination-plant-in-south-africa>

47 Oliver, C., 2017. *How to steal a city: The battle for Nelson Mandela Bay: An inside account.* Jonathan Ball.

48 *Dwindling water supply could lead to “job blood-bath” says Business Chamber.* <https://www.groundup.org.za/article/dwindling-water-supply-could-lead-job-blood-bath-says-business-chamber/>

MEGA's procurement of a consultant engineer to manage the investment process got off to a difficult start. When the bids were opened and presented for evaluation, the administrative officer responsible for procurement informed the bid evaluation committee that most tenders were not compliant and would have to be disqualified. It transpired that, a few days before the tender closed, s/he had circulated a revision to the request for tenders which required some additional information to be included in tender submissions.

The official responsible proposed that the committee should therefore award the contract to the only technically qualified bid amongst the few remaining tenders – which was significantly more expensive than those that were disqualified. The committee refused, pointing out that the last-minute details required were not material. It decided to evaluate all bids rather than delay the process by starting the process over again. From this process, another company was recommended.

*Ethical leadership
focused on
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security.*

However, after the meeting, MEGA's CEO Boyce Mkhize apparently altered the committee's recommendations. It was alleged that Mkhize changed the scores of the committee to favour a company which the committee had scored as among the worst. That company was subsequently appointed. When these issues came to light, Mkhize resigned, taking a golden handshake of over R4-million.

A few months later, responsibility for the projects was taken from MEGA and returned to the municipalities and some of the work was eventually finished. Quite how much money had been spent, where, by whom and for what requires detailed investigation. And Mpumalanga water supplies have continued to deteriorate.

Ethical leadership focused on achieving public goals is clearly a prerequisite for achieving water security.

2.3 THE BUSINESS SIDE OF CORRUPTION

Many of the cases presented above focus on the behaviour of public officials. Yet many private individuals and businesses deliberately develop and exploit weaknesses in the public sector. Such behaviour can be found from the level of the community plumber and tanker driver up to the boardrooms of major international companies. As in other cases, the impacts of this behaviour are no less serious and are felt most acutely by poor households and communities. But large businesses, in pursuit of their own goals, often actively create the conditions in which corruption flourishes, at the expense of the natural environment and public health.

How water tankers cause taps to run dry

The focus of anti-corruption efforts is usually on multi-million-rand contracts and high-level officials. However, residents of poor communities have another set of problems. They interact with frontline officials and staff working for small local municipalities. In these areas, the concern is often with the way in which services are actually provided – or, too often, why they fail.

Even in the best run systems, piped water supplies sometimes fail and it may be necessary to supply water by tanker. This may be the result of pipe bursts, power failures or interruptions to allow maintenance and construction. Because of the inconvenience for users and high costs – often 20 times more than a piped supply – tankers should never be used as a long-term option.

However, for some people, emergencies that require tanker transport are an opportunity. Many municipalities hire tankers from private contractors when they are needed. In these cases, municipal officials, the tanker owners and even tanker drivers can all benefit from tanker use. But if there is no emergency, the investment in tankers is unproductive and drivers are idle. This can create dangerous situations.

In 2014, three people were killed during protests in Mothutlung, a small community lying between Brits in the North West province and Ga-Rankuwa, part of Tshwane in Gauteng. The community's water supply failed, it was reported, because all three pumps serving the area

had broken down. In the interim, the Brits-based Madibeng municipality told residents that they would be served by tanker.

The residents refused to accept this. They alleged that the pumps had been deliberately sabotaged to enrich the private owners of water tankers, who had paid kickbacks to municipal officials to cut the supply.⁴⁹ This allegation was credible. Mothutlung is not a distant rural village. It is close to major urban centres with reliable water supplies and well developed maintenance facilities, just 10km from the municipal water treatment plant.

Shocked by the conflict, provincial and national government officials intervened. They took control of the municipality, not for the first or last time, and quickly restored the piped supply. But problems continued and, even when water was restored, it was not drinkable.

Such problems with tankers are widespread. In Umlazi, eThekweni, residents recently protested because, they said, tanker drivers were demanding R200 to fill their house tanks after four weeks without water.⁵⁰ There too, protest leaders alleged that the supply cuts were deliberate: “We hear that officials are cutting our water supply so that we will get water delivered by tankers. We hear that the officials are benefiting from the water tankers,” said protest leader Nkanyiso Msomi.

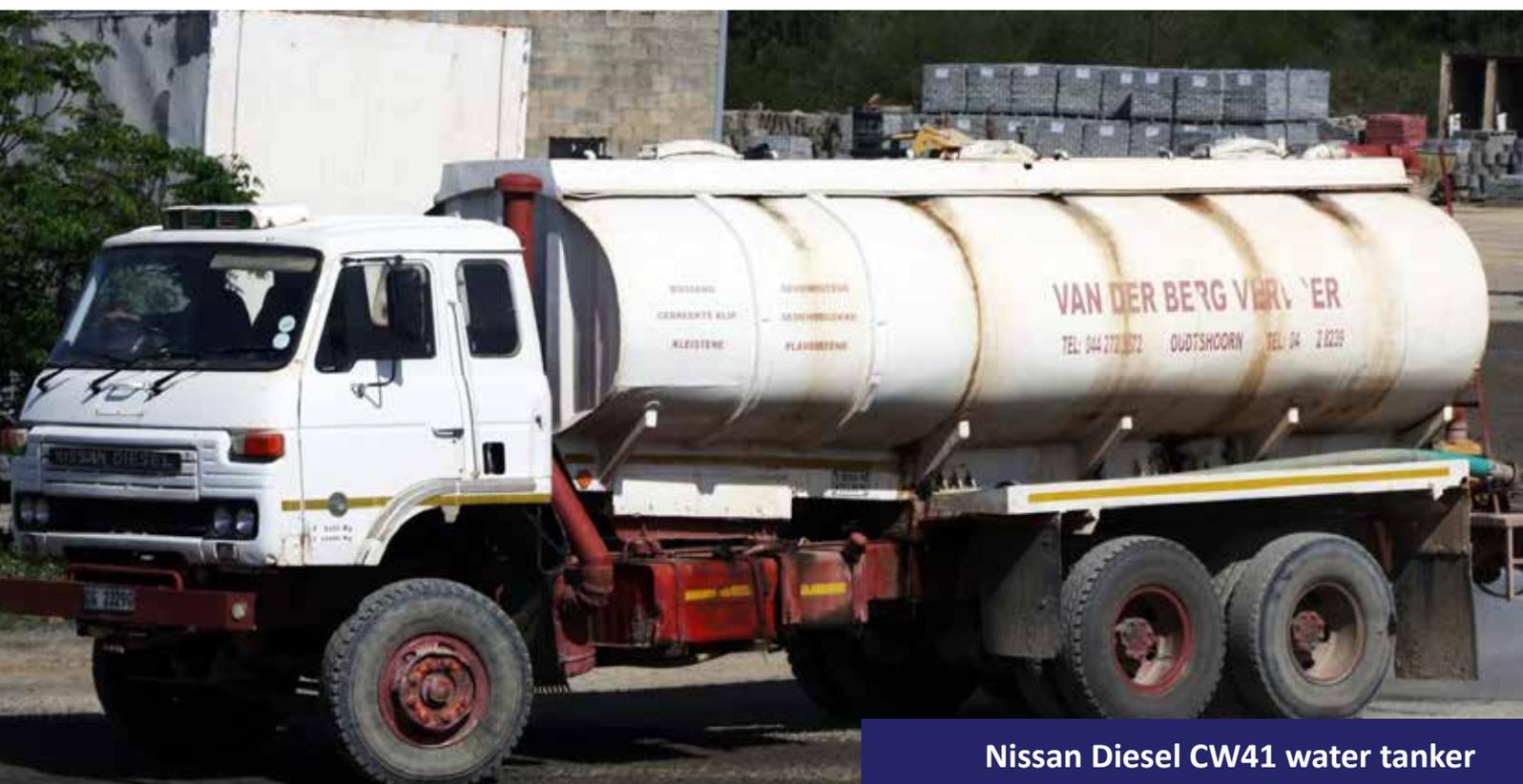
In Limpopo province, DWS officials reported that: “Many tankers were bought during the 2015/16 drought. One anonymous example given is where Sekhukhune officials buy tankers (at R1.3 million) and then rent these to themselves. ‘They fill the tankers from the Municipal supply and sell the water at R20/bucket (R1/litre!!). Over Christmas the public supply pipe was closed (by these same officials) in order to keep their tankers busy’. And the community feels powerless.”

The DWS has identified tankering as a recurrent problem. A 2018 report notes that “it is an expensive way of providing water, for both consumers and their Water Authority. It also perpetuates the underlying problem – absence of a sustainable supply – not only diverting funds that could be used for permanent infrastructure but also ‘by reducing the will to act’. The urgency of providing piped water is lessened.”⁵¹

49 *Dirty water scandal.* <https://www.timeslive.co.za/news/south-africa/2014-01-16-dirty-water-scandal/>

50 *Protesters blame corruption for lack of water in Umlazi.* <https://www.groundup.org.za/article/protesters-blame-corruption-lack-water-umlazi/>

51 Tankering as a Social Issue (internal document). DWS 2018



Nissan Diesel CW41 water tanker

The departmental document also acknowledges systemic corruption: “Failure to maintain water supply systems results in interruptions to the service and the need for emergency supplies (i.e. water tankers). Lack of maintenance thus becomes part of the business model of those with interests in transporting water (and) tankering becomes an operation that is difficult to stop. ... Where tankering services are contracted in, the owners of these tankers become reliant on the business and have no incentive to see this come to an end. ... Once one starts tankering it is very hard to stop, as local interests become entrenched. If there is tankering into an area where a project is planned, then that project is going to fail.”

“We hear that officials are cutting our water supply so that we will get water delivered by tankers. We hear that the officials are benefiting from the water tankers.”

The departmental document draws the obvious conclusion, but it is not easy to enforce:

“... tankering ‘frustrates the will to act’ by the supply authority. What may frustrate this ‘will to act’ to fix formal infrastructure is the blossoming industry around water tanker services – with backward and forward linkages to the District Municipality..... One always needs some emergency capacity (like one always needs a fire engine) – but this is emergency capacity – and should not be in permanent employ.”

Yet in many regions where local management has failed, municipalities resort to tanker supplies, continuing the vicious cycle and sustaining the corrupt interests at the expense of providing effective basic services to the communities concerned.

Chemical toilets in Ekurhuleni

Similar situations arise with sanitation in poor communities. Reports of failure to provide decent sanitation services are, correctly, a source of embarrassment to the whole society. So politicians from all parties support calls for action to improve sanitation. Just as reliably, profitable solutions will be developed and promoted to achieve this.

Sanitation provision in informal settlements, particularly those that are regarded as unlikely to be permanent, is particularly difficult. Municipalities are reluctant to build permanent infrastructure that may eventually be abandoned. A convenient solution is to provide portable chemical toilets. The attraction of these is that they just need level ground to install and can be hired from service providers who empty and clean them – correctly managed, this is slightly better but not much different to a bucket toilet system.

Many companies provide toilet hire services which have become one more lucrative opportunity for corruption. In Gauteng’s Ekurhuleni Metro Municipality, a R1.9-billion, three-year tender to provide and service almost 40 000 chemical toilets was suddenly set aside, sub-divided and re-allocated to chosen beneficiaries.

Of the 250 companies which bid for tenders to supply portable chemical toilets, quite a few of the lucky 16 to be selected had no experience or equipment and simply hired toilets from larger companies whose bids had been unsuccessful. This ‘diversification’ of tenders was alleged to have distributed the profits between politically connected parties and, indeed, some of the beneficiaries are better known for political corruption than sanitation provision.⁵²

This kind of arrangement also leads to problems of supervision and it is common for community members to complain that toilets are not being maintained. This occurs in particular where the successful tenderers do not have their own capacity and have simply sub-contracted supply from other companies. In these cases, either the price of the service has to be inflated, diverting funds which could be used for other purposes, or contractors make their profits by skimping on maintenance commitments.

Illegal connections – corruption or simply unauthorised service provision?

Even in the poorest communities, many households are directly involved in what some people call corruption when they are connected to the supply network without authorisation. Such illegal connections are widespread and they can significantly affect access to water supplies, as well as

their reliability and safety. Tapping into pipes ‘informally’ often damages them, shortens their life and allows leaks to develop and polluted water to infiltrate the supply. Sometimes, connections are made by simply cutting into a plastic pipe and bandaging a new connection onto it with rubber tubes from bicycle tyres held on by wire.

Where connections are not formally registered, users do not contribute to the cost of the public supply. Households that are entitled to a free basic water supply are likely to use more than their basic allowance if supplies are unmetered and unbilled. Overuse then contributes to poor maintenance and early failure and often deprives downstream users of their supply.

Even legally connected households may prefer that their neighbours use illegal connections to avoid having to share their own tap – which would increase their costs

Households often see the situation differently, arguing that this approach is simply self-help and should be allowed, particularly if they are told that water in a passing pipe is not for them. This may be because they are in an area not intended for settlement, where the local municipality does not want to provide services. In former homelands, settlement may be encouraged to force municipalities to provide services, which increases land values for traditional leaders.

Illegal connections are often made by current or former employees of the municipality who have the knowledge and access to the tools and material required. So what appears to be a simple illegal action may be relatively complicated, involving not just the householder and a local plumber but traditional authorities and municipalities.

An authoritarian administration would simply declare such actions illegal and instruct their technicians to remove illegal connections. But this creates tension with local traditional leaders and communities, and presents challenges in a country where lack of access to services is largely determined by a mixture of race and class. Even legally connected households may prefer that their neighbours use illegal connections to avoid having to share their own tap – which would increase their costs.

Given these dynamics, many service providers simply ignore the problem. Even cities such as Johannesburg are careful about how they deal with these issues. Joburg Water’s operational management system makes it very difficult for maintenance teams to use city resources to make illegal connections. And repair teams are instructed to fix leaks found in illegal connections rather than disconnect them; they are then supposed to tell the commercial department which should visit and regularise the connection but this does not often happen.

So illegal or unauthorised connections proliferate, leading to shortages. In the absence of user payments, maintenance is not done and systems deteriorate. Government’s household surveys show that service reliability is declining all over rural South Africa and, increasingly, in urban communities as well. Meanwhile, the question remains: do illegal connections reflect corruption or simply a failure of policy, local politics and community management?

Mining licences, pollution and public versus private interests

In the formal business sector, the problems are different. Environmental regulation is identified as a risk particularly in sectors such as mining, because it can impose costs and delays. So, where public officials have powers to control water pollution and water abstraction, private interests have an obvious incentive to find ways to work with them, for mutual benefit.

These problems are exacerbated when the issues regulated are complex and poorly understood, since solutions to complexity often open opportunities for corruption.

This is illustrated by the challenges that arise when water licences are required for mining activities. Before a mine is established, water managers have to consider whether:

- the mine’s water requirements can be met from available resources;
- the mine’s operations could indirectly reduce the availability of water for other users (for instance by drying up boreholes);
- water pumped out of the mine to enable mining operations will cause pollution problems;
- indirect pollution, such as runoff from mining land, may pollute local water resources;

- mining will damage the water resource itself, by draining wetlands or obstructing streams;
- adequate financial and technical provisions have been made to protect the environment after mine closure.

Assessment of these issues requires detailed information about the site, the nature of the operations, the infrastructure to be built, how it will be operated, and how mine closure will be managed and funded. Critically, the regulator also needs detailed information about the current state of the water resource and other uses.

Legislation requires a formal approval process to address these issues – and guarantees of funding for remedial work when mining is concluded. This process is prone to poor and deliberately improper decisions. But because delays are costly, national policy has sought to streamline and coordinate work of the departments involved (minerals, environment, land reform, and water) and speed up the process. The present regulations state that licence applications must be finalised within 300 working days. This is often inappropriate since information must be provided by applicants and then confirmed and analysed by regulators. The obvious strategy for applicants is to dump a great deal of information on the regulator, object if more information is requested and complain about the time to reach a decision.

But the mines also depend on the competence and good will of the regulator. Since delays are costly, there are strong incentives for the applicant to speed up the process and for rent-seeking officials to slow it down. It is a recipe for corruption, and this is what has been observed:

“If you can’t get a water licence, this could delay you for years... So why should R10 000 [bribe] be an obstacle... The policies are good. It’s the implementation and the institutions. The website [to apply for licence] you can’t get in, it doesn’t work... The work done by the political and executive arm gets confused with this... Political influence is standard. You must move in the right circles.”⁵³

Getting a water licence is just the start. Complying with its conditions can be just as challenging.

“If an official demands a bribe, you won’t say [no] as it will create a bad relationship with that official and they will come and find fault on your mine every day so this goes unreported. There is corruption at high and low levels of government. We also corrupt officials as business people. It happens both ways...”⁵⁴

Complex regulation, weak institutions, pressures for the transformation of the mining sector make for a toxic environment in which it is likely that corruption will flourish unless there is strong, ethical leadership in business as well as government

Effectively, environmental and water use licenses were for sale and for small junior miners, it may be easiest to ignore water impacts and concentrate on jumping the big hurdles. The CEO of one small company explained how he worked the system:

“You must find an individual in the Department of Mineral Resources... offer money ...pop up money all the way... because mining rights can take two years... although it’s better now. You rely on that individual to know what to expect. Big companies have done this before so they know. So it’s not so hard for them... Some mine without water licences. Some get a mining permit and then mine and get a water licence later. Some officials say you can mine, some say you can’t.”⁵⁵

An ongoing source of outrage for the environmental community is that many companies, old and new, large and small, start mining before they have a licence. This is particularly problematic for large companies with reputational concerns. The manager of one large company explained that a licence he had been waiting almost a year for, was desperately weak, and imposed impossible conditions. It required wastewater to be treated to a standard cleaner than drinking water; and the geographic coordinates located the mine hundreds of kilometres off the coast in the Atlantic Ocean. His options? “I can point out the errors and then wait for six months while they fix them or simply start mining and argue later, if necessary”.

53 Coal, water and mining flowing badly. Kally Forrest & Lesego Loate, Society, Work & Development Institute, June 2017

54 ibid

55 ibid

Complex regulation, weak institutions, pressures for the transformation of the mining sector make for a toxic environment in which it is likely that corruption will flourish unless there is strong, ethical leadership in business as well as government.

Corporate corruption creation: EOH's move from SAP to specialised water services

Regulatory corruption in mining might be regarded as a deviation from normal business practice. But, beyond mining, the strategies of some large private sector companies appear to have been structured to enable corruption. The SAP case described above has shown that public sector IT provides opportunities for corruption because of the technically complex nature of the contracts, which make it difficult to assess value for money and performance. But other specialist services that offer similar opportunities have increasingly been targeted.

A case in point is Enterprise Outsourcing Holdings (EOH), a conglomerate that branched out from its original IT business into other specialist services. At one point, it had a mindboggling set of almost 300 subsidiaries. They range literally from A (About Time Software, which sells US business software services) to Z (Zusiza Pty Ltd, offering training courses ranging from office cleaning to project management, and boasting strong relationships with the country's SETAs, which control billions of rand from government's training levies.)

EOH's wider business activities became notorious when it was revealed that a whole division had apparently been structured to promote public sector corruption. As the IT business became increasingly competitive and commoditised, EOH started looking for opportunities to run the specialised technical functions inside the businesses that used their IT. And, in South Africa, the obvious place to do that is in the public sector, where many organisations appear unable to manage their own operations. So in 2015, EOH made an aggressive foray into the water sector, buying up specialist service providers.

By 2018, it had acquired at least 12 companies. Stock market commentators approved: "The company is looking to provide a one stop solution for government municipalities in South Africa and also in developing African countries. They will assist these municipalities in managing their IT and infrastructure needs efficiently. In this space there are numerous small scale technologies to be adopted that will increase the package of services offered to their customers ... in South Africa water and electricity management are key areas of focus. Any acquisition that could bolster their service offering in this area or strengthen their relationship with government municipalities in South Africa or the rest of Africa would make sense."⁵⁶



These companies represented a significant investment. While EOH's annual reports do not specify the revenue from the water sector, "the aggregate carrying amounts of goodwill" allocated to the water "cash-generating units" was R281 151 000 (6.6% of the total); if "Infrastructure management's" R113 701 000 is included, it made up over 9% of the business. And, according to its annual reports, EOH's ambition was to expand further in this area.

Rather than look at big construction projects, EOH concentrated its efforts on the management of water distribution networks. This made sense. A reduction of water losses was a national priority, and by 2015, it was clear that the War on Leaks was not going to achieve it. The challenge was to make money out of good intentions.

So EOH bought the following companies:

- 4 Water Supplies, which specialises in water demand management and loss control, offering a comprehensive range of products in this field;
- CivEc Consulting Engineers has designed and installed water networks cities and towns across Gauteng and Limpopo provinces;
- Combined Systems was PricewaterhouseCoopers's asset management subsidiary and had significant water sector business in a specialised niche where EOH already had three companies operating;
- CSVwater Consulting Engineers focus on "the science and engineering of water" and had worked on DWS's Green and Blue Drop monitoring programmes;
- Dihlase Consulting Engineers "understand water services, from data collection and evaluation to project design, development, and management";
- JOAT Consulting and their regional companies offer to reduce non-revenue water "through a winning combination of leading expertise, reliable world class products, and in-depth knowledge of complexities";
- WRP Consulting Engineers are specialists particularly "in water conservation and water demand management, including non-revenue water reduction" (and, significantly, were historically direct competitors of JOAT);
- GCT (Grid Control Technologies) specialises in the supply and management of smart meters for water and electricity and related information systems;
- Paterson Candy International has a focus on water treatment. wastewater and industrial treatment sectors; and
- GLS Consulting and its subsidiary software company specialise "in the analysis, planning and management of water-related and electricity systems" and have a "holistic approach to the modelling and planning of municipal water, sewer and electricity infrastructure systems by the application of in-house developed high technology software and processes"

EOH's structure allows it to operate a 'design, build and operate' business through its subsidiaries, creating three potential profit centres – similar to turnkey models. This is a classic strategy for privatisation but avoids using the sensitive 'P' word. It allows the company to buy goods and services where it wants (including from its associates or other preferred providers) and to charge for different elements in a way that makes it difficult for clients to ensure cost effectiveness.

The two legs of EOH's strategy in the municipal water market were thus firstly, to establish a group of apparently independent companies working in the same fields and, secondly, to develop business based on turnkey-type projects.

The third leg was hinted at by EOH's own statement that business with South African local government depends on "good relations" with the clients. After some massive corruption scandals, EOH eventually admitted that those relations were sometimes corrupt.⁵⁷ The company's internal investigations "found evidence of a number of governance failings and wrongdoing at EOH, including unsubstantiated payments, tender irregularities and other unethical business practices which are

57 7 burning questions for EOH as corruption allegations bubble over. <https://www.biznews.com/sa-investing/2017/07/28/eoh-corruption-allegations>

primarily limited to the public sector business” (and) “....may relate to legitimate transactions, theft or bribery and corruption payments”.⁵⁸

In this context, EOH’s water focus raises obvious questions. How did the company benefit from its focus on specialised areas of operations such as the management of municipal distribution systems? What benefit did it receive from the fact that it owned multiple companies that worked in the same small sub-sector? Were they really competing against each other or did they enable tender processes to be rigged, by ensuring that the key bidders were not independent but members of the same team?

There are suggestions that these weaknesses were profitably exploited. During Cape Town’s water crisis it is alleged that two EOH companies competed separately for a water-saving project. Both were shortlisted. But because of a (deliberate?) error in the tender documents, the company that offered the lower price was disqualified. As a result, the more expensive EOH company took the contract, with a hefty premium.

South Africa’s Competition Commission had considered the potential risks of allowing EOH, which still claims to be Africa’s largest ICT company, to expand its reach.⁵⁹ When GCT was acquired in 2015, the Competition Tribunal agreed with the Commission that “the transaction is unlikely to substantially prevent or lessen competition in any relevant market”.⁶⁰ When PricewaterhouseCoopers wanted to sell its Combined Systems operation to EOH, the Commission recognised that the combined group would probably control over 50% of its asset management market, but concluded that “the proposed merger raised no significant concerns given that this is a tender market and that there are certain alternative service providers active”. The Tribunal concurred.⁶¹

The Cape Town water loss control contract illustrates the danger of relying on the existence of tender markets as a defence against market dominance. And GCT showed that tenders were no defence against anti-competitive behaviour when it became the focus of a major corruption scandal involving control of the South African Police Service’s computer system. Those concerns saw GCT returned to its shareholders in 2017. EOH’s CEO said that “... all the questionable contracts done by the GCT Group were concluded before they were bought by EOH...”

As a consequence of its admissions of corruption, EOH’s fortunes have continued to decline. Its share price collapsed as profits turned into substantial losses. The April 2019 interim report warned shareholders that there had been under-performance in the water space, with, amongst other issues, delays in starting projects as well as new project awards as a result of public sector funding and administrative delays. And EOH Mthombo was disbanded.⁶²

What was supposed to be an important new business area for EOH has turned into a swamp. Concern about potentially corrupt activity in the water sector has not been allayed by the continued revelations of corporate malfeasance. It was, after all, EOH that won the DWS’s controversial SAP tender back in 2016. So the SIU investigators who are looking into that irregular contract have been knocking at EOH’s door. And given the many other contracts that EOH companies had with DWS and water sector institutions such as the Water Research Commission, water boards and municipalities, there may yet be more revelations about how the company’s water business really worked.

Ekurhuleni Meters - Regulation 32 abuse

Another specialised technical niche in the water sector that has proven to be vulnerable to corruption is the business of water metering. It is critically important to measure the amount of water that is supplied to users, as this allows municipalities to not only measure how much of the water that is put into networks actually gets to users, but also to charge users for the volume that they use (which is why some social movements and community organisations oppose metering).

58 EOH Holdings Ltd - Further cautionary announcement. https://www.sharenet.co.za/v3/sens_display.php?tdate=20190828174300&seq=62

59 EOH survives annus horribilis as it claws its way out of a graft hole. <https://www.businesslive.co.za/bd/opinion/2019-11-03-stephen-van-coller-eoh-survives-annus-horribilis-as-it-claws-its-way-out-of-a-graft-hole/>

60 EOH Intelligent Infrastructure (Pty) Ltd and Pia Solar SA (Pty) Ltd. <http://www.saflii.org/za/cases/ZACT/2016/115.html>

61 EOH Mthombo (Pty) Ltd and PricewaterhouseCoopers Combined System (Pty) Ltd. <https://www.comptrib.co.za/case-detail/7322>

62 Corruption-tainted EOH Mthombo to be shuttered. <https://www.itweb.co.za/content/VgZeyqJARBPMDjX9>

However, with the benefits come costs. Meter reading also provides opportunities for corruption and has proven to be one of the more problematic water supply management functions, whether it is performed in-house or out-sourced to private contractors.

Nor is it a problem limited to small household water users. In 2018, the City of Johannesburg charged employees of Waterfall Estate, one of the largest property developments in the country, with using illegally installed meters to avoid payment for over R8-million worth of water. So there is always an appetite for metering systems that will provide reliable, tamper-proof, water use information. And the supply of meters – for electricity as well as for water – is a lucrative and specialised public sector business that has attracted politically connected entrepreneurs.

In Ekurhuleni, it was alleged that R205-million had been spent on buying water meters from Lesira-Teq without proper procurement procedures, and that the meters supplied were unreliable. More important, they were grossly overpriced at over R1 800 each while, in a tender process that was ignored, comparable units were offered for as little as R1 025.

The municipal officials invoked the much-abused Regulation 32 piggy-backing provision that allows one local government to save time (and money) on procurement by using a tender that has been awarded by another municipality. They simply purchase the goods or services accepted in one municipality on the same terms. There is an important condition: The municipalities must ensure that “there are demonstrable discounts or benefits for the municipality or entity to do so”. That clause was ignored in Ekurhuleni and a number of other municipalities.⁶³ And the original contract was suspect because Madibeng, where it was awarded, is considered to be one of the most corrupt municipalities in the country.

There was a pattern in this process. Similar contracts were won in other municipalities where Slindokuhle Hadebe, the head of water in Ekurhuleni, had previously worked. And, in some cases, it appeared that the municipalities did not really need, or use, the meters. Indeed, in Mangaung, it was alleged that the company had committed fraud by invoicing for meters that were not installed. The company’s claim that the meters had been supplied and then taken back because they were not told where to install them was difficult to contest because none of the employees at the time were willing to provide information. The city lost the case and nearly R20-million.

It may be relevant that Lesira-Teq’s chairperson Baker Maseko was head of strategy for the ANC’s 1998-1999 national election campaign, and that Hadebe was deputy chair of Edna Molewa’s advisory council while she was minister of water affairs.

The chickens of state capture come home to roost, in microcosm

The systemic challenges of corruption in South Africa are widely recognised and often described as a problem of state capture – a particularly damaging form of corruption that refers to the capture of decision-making centres of the state by syndicates comprising business interests and powerful political leaders. The captured institutions are then repurposed to serve the interests of their captors – the business interests gain privileged access to state contracts and regulatory decisions while the political interests use the largesse to consolidate their political power. In many cases, particularly in local government, the water sector and its activities are the victim of these larger battles over control of resources more generally.

The Lekwa municipality in Mpumalanga province provides an example of how infighting in a municipality, in this case between ANC factions, has had disastrous impacts on water supply. Standerton, Lekwa’s main town, is home to the main poultry processing plant of Astral Foods, the biggest in Southern Africa. It is also one of the largest employers in the area, with over 2 200 workers. But its future is under threat, owing to the lack of a reliable water supply.

Disputes between different factions of the ruling party, essentially to capture control of the municipality’s limited resources, distracted attention from the critical job of maintaining and expanding the town’s water supply. Despite the company’s assistance, the municipality had failed to undertake even minimum maintenance. Even a court order compelling the municipality to provide the

63 *Municipal corruption in spotlight in R614m water scandal.* <https://www.timeslive.co.za/news/south-africa/2012-08-02-municipal-corruption-in-spotlight-in-r614m-water-scandal/>

contracted volume of water had no impact. As a consequence, the company has had to truck water to its installations at considerable expense. It is now considering shifting production elsewhere.⁶⁴

2.4 CORRUPTION IS NOW ENDEMIC AND SYSTEMIC

The cases presented above involve all levels of society from municipal plumbers to national ministers, from poor householders to the directors of multinational companies. They suggest that corruption is now endemic, present and taken for granted, across the South African water sector. It's simply regarded as what may be needed to get work done. And it is not limited to the public sector.

Recently, a water sector expert was asked by a large company to provide a shortlist of consultants who could tender for a specialised technical project. A group of young black scientists whom he had identified tendered against some experienced (white) experts. Their proposal was judged the best on both technical and financial criteria, not least because they were willing to undertake the gruelling fieldwork required, and they won the contract.

Shortly after they were appointed, they called the person who had put them on the shortlist for the project. Where, they wanted to know, should they pay the 10% commission that they owed? They were surprised to be told that they had been listed because they had a team capable of doing a good job; the reward would be for them to perform well since this would enhance the reputation of those involved in identifying and appointing them.

When this story was recounted to other people, including some who worked in civil society organisations, they were amused. The 10% payment to get a decision was now standard practice, they said. One told of a rural non-governmental organisation (NGO) that had been chosen to receive a large grant for its community work. The last hurdle was a visit by an independent evaluator, just to check that everything was above board. As he was leaving, he was taken aside by the head of the NGO and told that, of course, if the grant was approved, he would be getting his share. That offer lost them the grant.

Civil society faces a dilemma and it is not just small, local community organisations. The CEO of the Mvula Trust, a 25-year-old water sector NGO with an annual income of over R100-million, recently confirmed allegations that Ishmael Kgetjepe, then education MEC in Limpopo province, was paid over a million rand to maintain a contract to provide school toilets. According to reports "... the trust's managers told the auditors that Kgetjepe phoned them and asked them for money, and sometimes he would ask for money 'in person' the trust's management believed that if they had refused Kgetjepe's requests, it would have the 'potential to directly or indirectly affect our business relationship with his department since he is the political head'." ⁶⁵

These examples suggest that this kind of corruption is now systemic, spread through the whole society. It does *not* mean that every transaction on every project is corrupt. But it does suggest that, for people working in the water sector, corruption is just one more operational obstacle to be dealt with, like bad weather, poor foundation conditions, or an equipment breakdown.

How can such systemic corruption be dealt with? Twenty years ago, the World Bank described a situation which has become commonplace in South Africa:

"Where corruption is systemic, the formal rules remain in place, but they are superseded by informal rules ... in practice the law is not enforced or is applied in a partisan way, and informal rules prevail. Government tender boards may continue to operate even though the criteria by which contracts are awarded have changed."

The solution, they warn, is not simply to strengthen the formal rules - more is needed than having the right legal rules in place. First, the question must be asked:

"... why the informal rules are at odds with the formal rules and then by tackling the causes of divergence. In some countries the primary reason for divergence may be political, a manifestation of the way power is exercised and retained."⁶⁶

64 Astral Foods secures emergency water arrangement for Mpumalanga facility. <http://www.engineeringnews.co.za/article/astral-foods-secures-emergency-water-arrangement-for-mpumalanga-facility-2019-06-24>

65 R1m 'bribe' paid to MEC by NGO contracted to build toilets. <https://city-press.news24.com/News/r1m-bribe-paid-to-mec-by-ngo-contracted-to-build-toilets-20190305>

66 Helping Countries Combat Corruption: The Role of the World Bank. <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>

CHAPTER 3
Corruption strategies



CORRUPTION STRATEGIES – making sense of the evidence

One of the purposes of this report is to understand better the mechanisms used for corrupt purposes in the water sector. The evidence presented suggests that corruption can be characterised in three broad areas:

- **Manipulation of procurement and operational processes**

Traditional anti-corruption efforts often focus on the processes used by organisations to purchase goods and services. This is hardly surprising since the manipulation of these processes can ensure that the preferred partner gets the contract although they do not present the best technical or financial offer. They will often pay a handsome share of their profits to whoever facilitates their success. As a result, the mid- and lower-level personnel who administer these processes become quite expert in subverting them.

- **Influencing policy and regulatory decisions**

At a higher level, there is a more direct way of extracting benefit from the management of public resources. Decisions on which project to build or which application for a regulatory licence to approve are often very profitable for the beneficiaries. This requires a more strategic type of involvement before any procurement processes begin. In the case of regulatory decisions, getting people into positions where criteria are set and recommendations from technical officials are approved offers many opportunities for corrupt engagements.

- **Taking control of institutions**

Many of the administrative obstacles posed by internal rules and regulations can be overcome if the leadership of an organisation has corrupt intent. S/he can appoint compliant people to key positions to attend to the technical detail. In these cases, what becomes important is to exercise internal power in ways that do not draw the attention of external oversight agencies – such as auditors. This requires a degree of competence as well as compliance on the part of the technicians involved. Of course, if the wider institutional oversight environment has also been infiltrated, less caution is needed and it becomes much easier to proceed.

Set out below are some of the strategies that have been observed in the cases presented, following this characterisation.

3.1 MANIPULATION of procurement and operational processes

Beating bureaucracy or creating opportunities for corruption?

Efforts to control financial management in government have seen a proliferation of processes and procedures adopted to try to discipline behaviour. Quite often, they impede effective operations and implementation and can actually facilitate misdemeanours if the structures are captured and used to provide pathways for misappropriation.

The water sector depends on its built infrastructure and thus on the construction industry which has its own complexities. There are many more or less legal strategies that contractors and consultants use to promise to deliver a project at an apparently impossibly low price yet still make a profit. So it is important that their public sector clients employ specialists who understand the system and can make it work fairly and effectively while controlling corruption.

Qualification and pre-qualification

Tender processes can be rigged even in a well-run system – as long as there are sufficient people willing to influence the result. The pre-qualification phase, often used in large projects, is a starting point. Pre-qualification helps to ensure that only companies with a reasonable prospect of success enter the process. This reduces administrative workloads and opportunities for improper lobbying. It was indeed this process that saw the LTE company excluded from the main LHWP contracts, despite Nomvula Mokonyane's determined efforts to promote their participation.

But pre-qualification can be abused, to reduce the competition for a preferred bidder. A simple way to remove a potential competitor of the favoured bidder is to introduce apparently trivial requirements at a late stage, when many bidders will already have finalised their submissions. The Mpumalanga programme case described above was a good example.

The tender process – specification, evaluation and adjudication

Government regulates procurement processes for all public spending with special provisions for large infrastructure projects. National departments and municipalities are supposed to establish separate bid specification, bid evaluation and bid adjudication committees, each of which has a clear mandate. Some discipline is achieved by involving different people in the process of specifying what is required, evaluating tenders to provide it, and then taking decisions on which tenderer should win the contract based on recommendations received.

Yet, in many public organisations, the outcome of these procedures is often ignored if senior officials believe they can insist on different outcomes. So, in the [Mpumalanga water programme](#) the bid evaluation committee refused to disqualify the majority of competitors, since their non-compliance with tender conditions was judged not to be material. They recommended that the contract be awarded to the best bid. But the CEO simply changed the evaluation results and appointed his preferred company anyway.

A similar approach was taken in the case of the [DWS SAP tender](#) which showed that top officials were able to ignore procedural objections with impunity. Thus it is clear that, while it is important for processes to be followed, they are only effective if they are complied with at all levels and if there are consequences for a failure to do so.

The panel strategy

Some procurement rules, intended to enable government to appoint service providers speedily, provide an apparently easy way to bypass cumbersome tender procedures. An example often used for the procurement of consultants and small construction works is a guideline produced by National Treasury that explains how a panel of service providers can be established.

*“Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service providers for the rendering of these services may be established. These panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.”*⁶⁷

The conditions for such a list are quite general and, with a little ingenuity, terms of reference can be drawn up that favour desired providers; once they are on the panel, work can be channelled to them. This also allows potential competitors to be eliminated, and its generality makes it more difficult to contest. The process also allows considerable flexibility over costs incurred:

*“Once the panel/list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised in the Government Tender Bulletin again.”*⁶⁸

According to newspaper reports⁶⁹, it was through this process that LTE was awarded the controversial Giyani project:

“Asked how his company received the other nine mega water projects, LTE’s chief executive, Thulani Majola, said: ‘A tender was advertised for consultants to be on the panel of the Department of Water and Sanitation. LTE responded to the tender and was subsequently appointed.’ Once on the panel, Majola said consultants received work based on their capacity and experience.”

The panel process apparently also led to Vharanani Properties being appointed to complete both the Free State bucket toilets project and the Giyani programme’s Nandoni pipeline – neither of which fall under the definition of simple or routine.

⁶⁷ treasury.gov.za/divisions/ocpo/sc/Guidelines/SCM%20Jan900-Guidelines.pdf

⁶⁸ Guide for Municipal Accounting Officers_1. https://archive.org/stream/mfma_guidelines_guide_for_municipal_accounting_officers_1_pdf/MFMA/Guidelines/Guide%20for%20Municipal%20Accounting%20Officers_1_djvu.txt

⁶⁹ How R502m grew to R2.7bn in a year. <https://city.press.news24.com/News/how-r502m-grew-to-r27bn-in-a-year-20160423>

The DWS's panels were reconstituted after Mokonyane had said publicly that she didn't want work to go to the same old companies. While this was presented as support for black-owned companies, it soon became clear that *particular* black companies were favoured. The upshot is that awards were made, not on the basis of price and quality, nor on the basis of the BEE credentials of the chosen firms, but rather on the basis of their relationship with the minister. This resulted in a series of failed projects and cost overruns.

The emergency strategy

Unexpected events occur. Pumps break down, pipes burst, and natural disasters include floods that damage infrastructure and droughts that curtail water supply. The possibility of many of these events can be predicted and planned for. Utilities should keep a stock of common types and sizes of pipes and fittings. There should be backup sets of pumps and motors – and if one fails, it should be repaired quickly. The identification and protection of key infrastructure can avoid flood damage while, once it is recognised that droughts will occur, operating rules can be developed to trigger early supply restrictions rather than wait until supplies fail.

Nevertheless, most supply chain management policies make provision to bypass normal procedures in the case of a genuine emergency. The National Treasury guidelines say that:

“In urgent and emergency cases, an institution may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the State. Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case.)“

However, corrupt officials make frequent use of the emergency provision to avoid formal procurement processes either by claiming an emergency or actually creating one – and sometimes both. They may allow water treatment chemicals to run out or delay the repair of key equipment. At the extreme, systems have been sabotaged to create conditions for an emergency intervention – as alleged in the [North West tanker scam](#). When procurement is undertaken in these conditions, prices are invariably higher than they need to be and it is more likely that service providers preferred by the officials concerned will get the contract.

The emergency strategy was taken to its extremes in [the Giyani case](#) when a drought in 2009 was still being used to justify new tenders and contracts for major projects six years later. There was a revealing discussion on this subject with the Auditor-General's officials in Parliament's water committee as it sought to understand what had happened at DWS. The chairperson asked what the bursting of a water pipe would be classified as. The AGSA representative responded that “it would be classified as an emergency and it would take a day or two to attend to the emergency and correct it. However, if a pipeline is built from one dam to another dam it is not an emergency because the project might be a multi-year project.”

Andries Sekgetho, who had led the audit of the Giyani project, explained that there were problems with the budgeting process, financial management, compliance, and even the objectives of the emergency project.

“The initial scope allocated to the implementing agent that was linked to the ministerial directive based on the emergency, was R91-million. The directive was signed by the minister on 25 August 2014 after the contractor had already been appointed by the implementing agent on 20 August 2014. The scope was subsequently expanded to R248-million, based on a new ministerial directive signed on 24 October 2014. The current business plan [2017] now indicated total costs of R13.6-billion. There were no signed contracts between the department and the implementing agent.”

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Further detail was provided in subsequent hearings. It was explained that two types of emergencies are provided for in legislation, emergencies due to a disaster as per the Constitution and Disaster

The emergency strategy was taken to its extremes in the Giyani case when a drought in 2009 was still being used to justify new tenders and contracts for major projects six years later.

Management Act (DMA), and emergencies as defined by the Public Finance Management Act (PFMA). At the least, an emergency needs to pose a risk to health, life, property or environment. It is reasonable to make inference to timeframes stipulated by the Constitution and the DMA of 21 days and three months respectively. A maximum period of three months can be applied to the immediate action timeframe as the DMA makes reference to the PFMA. Therefore, the response actions to the emergency should be executed and completed within the three months.⁷¹

The Regulation 32 ‘piggy-backing’ strategy

Another provision intended to simplify procurement is also regularly abused. This is the piggy-backing strategy which allows one public sector entity to use a contract that has been properly procured by another. So, if the City of Johannesburg has gone through a proper tender process to procure, say, water treatment chemicals, why should the Midvaal municipality repeat the process? Why not just buy the same product, from the same supplier at the same price?

This approach is allowed by municipal supply chain management regulation 32 of 2005. It was the basis for the award of Umgeni Water’s recent R220-million security contract.⁷² It was also the provision that allowed the Ekurhuleni Metro Municipality – and a number of other municipalities – to buy substantially over-priced and inferior quality water meters.

A particular variant of this scam is for the initial tender to consist of a bundle of items in which a small quantity of a few individual items can be included at very high cost without affecting the overall competitiveness of the price. If another organisation uses the contract price to buy just those items, it is possible to charge grossly inflated prices, apparently legally.

The directives strategy – give orders then blame the officials, or the president!

While many corruption strategies are adopted by officials in the administration, there are some that can only be exercised by a political head. The Water Services Act (s41(1)) empowers the minister responsible for the DWS to direct the water boards under their oversight to undertake a specific activity. This power was liberally exercised and is at the root of the Giyani and War on Leaks problems where the department found itself with financial commitments that had simply not been budgeted for.

This arose because the minister and her senior officials ignored stipulations in the law that the directive must be ‘reasonable’ and that the water board will only pay ‘where the activity is financially viable’. In 2018, challenged by the parliamentary committee on the huge amounts of money owed by DWS to the Lepelle Water Board, the water board’s CEO Phineas Legodi explained that

.... “when you are given a legal instruction you can only defy at your own risk because that is insubordination, so directives had to be understood within that context, as a written lawful instruction ... In good faith the board receives and implements them with the understanding that money does or will follow.”

Asked whether an illegal directive would be implemented, the CEO responded that if it is illegal then he cannot implement. However, as a committee member pointed out, that is not necessarily the end of the matter.

”.... the biggest problem faced by the water boards is that a directive is given and then funding does not follow but the money remains in the department and the water boards end up spending their own money. There is a weakness somewhere at the level of regulation of directives.”⁷³

The history of Giyani and the War on Leaks show that the minister repeatedly abused her power by issuing directives for which she had no funds available. The water board expected that DWS would pay them so that they could pay the minister’s nominated service provider. But this then raises the issue of why proper procurement processes were not followed. As already indicated, the excuse about emergencies does not hold and the question is whether Lepelle can be held responsible for appointing a provider nominated by the minister – and whether it can show that this was indeed her instruction.

71 Briefing: Auditor-General South Africa, portfolio committee of water and sanitation. Follow-up on audit key matters. <https://pmg.org.za/files/180509agsa.pdf>

72 Umgeni Water in R220m tender scandal. <https://city-press.news24.com/News/mon-3pm-piggybacking-the-way-to-get-the-job-20181224>

73 Lepelle Northern Water Board & Magalies Water Board 2016/17 Annual Report, with Deputy Minister. <https://pmg.org.za/committee-meeting/25885/>

Two years later, when the SIU questioned Lepelle about the appointment of LTE on Giyani projects, both Legodi and Lepelle's planning manager Carel Schmahl were reported to have signed affidavits saying that they were instructed to appoint LTE.⁷⁴ Such discreditable behaviour should be seen in the context of evidence that, where officials have refused to do what they were told, in the Lesotho Water Commission or in the case of DG Maxwell Sirenya and Edna Molewa, the official is often simply replaced.

Unfortunately, under pressure, ministers can and do blame their officials for illegal actions, even where they are simply following orders. This is what Mokonyane did:

“On the irregular, fruitless and wasteful expenditure, she said the Director General present at the previous meeting had been suspended for dereliction of duty and compliance failures in management, administration and accounting. Suspensions were also meted out to DDGs based on the report of a task team.”⁷⁵

If all else fails, a final strategy used by Mokonyane in 2018 was to claim that she was acting on a presidential directive:

“Officials accepted that the *War on Leaks* project had not been budgeted for and was irregular, but the reason given was that it had been a ministerial directive. ... The idea of the *War on Leaks* project had been put forward for inclusion in the State of the Nation Address by the President in 2015 and then, based on its inclusion in the State of the Nation Address, a memorandum had been sent to the Minister of Water and Sanitation requesting her to sign a directive for the implementation of the project.”⁷⁶

The turnkey strategy

A feature in a number of cases which could be termed ‘grand corruption’ has been the attempt to gain control of the entire process of conception, design and construction of projects through the use of turnkey contracts. This was at the root of [the Giyani case](#) and the promotion of the [Mangaung pipeline project](#), and also underpinned some of EOH's strategies.

The turnkey approach (also called EPC – engineering, procurement and construction) can be a very useful way to tackle complex projects that reduces the risk for the client. The client provides a broad brief, specifying what is required from the project, for instance, the reliable delivery of a given volume of water treated to a specified standard. The contractor is then chosen on the basis of their ability to deliver the required outcome.

This gives the contractor the responsibility for choosing the technologies used, integrating them into the overall project design, building the project and, when it is completed, putting it into operation to show that it is producing according to the specifications. The contractor is also responsible for coordinating the work of different suppliers and sub-contractors and has to carry the cost of any delay.

A turnkey approach could have avoided the management failures that saw completion delays and huge cost overruns in Eskom's Kusile and Medupi power stations.⁷⁷ If properly supervised, it will also reduce the risk of corruption on individual sub-contracts

However, for turnkey approaches to succeed and provide value for money, the contract strategy must be well defined and contract details carefully drawn and supervised to ensure that the desired outcomes are achieved, that the risks are carried by the contractor, and that any specific developmental conditions are not abused. In the Giyani project and the Mangaung proposal, the companies that led the process were not chosen through a proper competitive process and there appeared to be no tender process or cost controls for the appointment of their sub-contractors.

⁷⁴ How Mokonyane paved the way for a consulting firm to earn billions. <https://www.news24.com/SouthAfrica/News/how-mokonyane-paved-the-way-for-a-construction-firm-to-earn-billions-20180317>

⁷⁵ Water Affairs irregular, fruitless & wasteful expenditure & accruals, with Minister: hearing 3. <https://pmg.org.za/commit-tee-meeting/24880/>

⁷⁶ Ibid

⁷⁷ Tough lessons from Eskom — or not? <https://www.timeslive.co.za/sunday-times/business/2019-04-21-ron-derby-tough-lessons-from-eskom--or-not/>

The ongoing challenge of managing construction contracts

Large construction contracts are well known for their vulnerability to corruption and have thus drawn considerable attention. Administrative approaches to initial procurement (tender processes) are well developed and can work if there is independent oversight with no conflicts or own interests, although many of the challenges and risks have been described above.

However, challenges continue once a contract is awarded. In any large construction project, there are uncertainties about, for instance, the detailed foundation conditions. There is usually provision for variation orders, changes in the defined work if, for instance there is a change in detailed design, or in the event of delays due to weather, labour challenges, or the failure of another contractor to deliver the goods. These eventualities can often be extremely costly as contractors are entitled to claim for all extra costs incurred.

As projects progress, contractors submit invoices for work done, which must be inspected and confirmed on a day-to-day basis since many elements of the work will be hidden as construction proceeds. The compliance with specifications for quality and quantity of materials used must be confirmed. If all of these factors are not carefully managed by the client's representatives, additional claims can mount rapidly and shoddy workmanship can be hidden.

The opportunities for collusion between the client's representatives and contractors is thus a permanent risk – and highlights the importance of appointing competent and trustworthy supervising consultants as the client's representatives. But it also highlights an obvious strategy for a client that wants to enable inappropriate claims/payments to its chosen contractor – to appoint staff who will, if so instructed, process contractors' invoices and not question excessive or fraudulent claims.

Many of these issues were identified in Phase 1A of the LHWP and have been mitigated in subsequent phases of the project. But this is a permanent activity and water sector institutions need to have access to competent infrastructure specialists who can manage the intricacies of unforeseen circumstances, scope changes, and variation orders to control such activities.

3.2 INFLUENCING THE POLICY AND REGULATORY FRAMEWORK

Regional bulk infrastructure grant - creating opportunities for corruption?

There are often choices to be made between different projects to achieve the same objectives – and between projects which might offer more or less social, economic or political return. These choices should be made on the basis of public interest criteria – to achieve public policy goals efficiently and cost-effectively.

But there are many examples where personal political and private interests seek to guide decisions towards choices that offer the greatest private profit rather than public benefit. In a perfect world, funds would be allocated to achieve their public purposes through the most efficient channels. In real organisations, both private and public, control over budgets is just as often a matter of personal power rather than public priority.

When South Africa's new local government structures were formally established in 2001, DWS officials were concerned that they would lose control of the capital budget for water services to municipalities. While they could still set conditions on the grants from national government, the money would be managed by the municipalities. But they argued, with some justification, that large bulk supply projects which crossed municipal boundaries, would often be more cost-effective.

This was a continuation of a long debate about the merits of small local schemes managed by the community of users versus large regional schemes managed by a specialised organisation. While cost, technical performance and broad public policy should be the main considerations, there are other factors at play. The management of public organisations often seek to expand their ability to deliver on their mandate, as well as to expand their influence, power and resources – the latter of which may be exploited to provide more direct personal benefits.

So South Africa's water sector NGOs promoted small schemes, offering the opportunity to support community management. Municipalities wanted to control activities in their areas, with the relevant funds. DWS had to argue that they simply wanted to ensure effective spending and that, as national regulator of water services, they should be able to set conditions on the use of grant funds from national government. It rapidly became obvious that while DWS could try to influence the choice of projects to be funded, municipalities could ignore the regulator with impunity – although the Mpumalanga case shows that the provincial governments, bypassed by the formal process, could still exert informal political control over the funds.

It rapidly became obvious that while DWS could try to influence the choice of projects to be funded, municipalities could ignore the regulator with impunity

When municipal supplies started to fail, the situation changed. Often, the problem was that, due to poor planning, distribution networks had been expanded without additional supplies of bulk water. But DWS officials used the opportunity to promote the concept of large regional schemes that often pipe water across the boundaries of individual municipalities. They convinced National Treasury and the Department of Cooperative Governance and Traditional Affairs to allocate a substantial proportion of the water grants to DWS through a special regional bulk infrastructure grant (RBIG).

The RBIG created unfortunate incentives and opportunities. So in some cases, large schemes have been built rather than cheaper small ones. They are bigger than needed and little attention has been given to the cost of operating them. This approach has often created liabilities rather than assets for municipalities. And, as the Giyani project showed, it also enabled corruption by evading oversight and weakening incentives to achieve effective public spending. The RBIG also helped to limit the accountability of DWS. So when water does not reach households, DWS simply explains, as they continue to do in Giyani, that connecting households is a municipal responsibility!

Local economic opportunities or protection rackets?

A specific feature in South African construction is the common requirement that a proportion of the workforce should be drawn from the local community. In communities with high levels of unemployment and poverty, pressure for jobs even as low-paid general workers is intense. The political response has been to require that a proportion of project jobs will go to local community members. But this has created new challenges.

Whoever is in charge of the recruitment of locals is in a powerful position. The practice of appointing labour brokers or community liaison officers to interface between communities and contractors began on RDP projects in the early years of South Africa's democracy. This has become a site of contention for power and reward and indeed the role of brokers in local politics has expanded into more general political activity.⁷⁸

Nomvula Mokonyane had personal experience of this. As MEC for housing in Gauteng, she was responsible for initiating the Sebokeng Regional Sanitation Scheme (SRSS), identified in 2005 as a critical national project to provide wastewater treatment for the growing population of south Johannesburg and to protect the Vaal River. The project proceeded slowly but was completely stopped in 2014 by community protests about the 30% quota for local contractors and the labour employment practices.

When Mokonyane visited the area in 2015, she heard allegations of corruption and nepotism. "Community liaison officers hire people in a corrupt manner. You'll often see five unskilled people from one house employed while those with skills sit at home," said one resident.⁷⁹ Conflicts continued around the project, and in 2018, the new minister, Gugile Nkwinti, said that he would approach the president to declare the SRSS a national key point in order to ensure the security of the infrastructure.⁸⁰

78 *Patronage from below: political unrest in an informal settlement in South Africa*. Hannah J. Dawson, 2014. African Affairs, 113/453, 518–539 doi: 10.1093/afraf/adu056

79 *Creating employment through infrastructure*. Water & Sanitation Africa, July/Aug 2015, https://issuu.com/glen.t/docs/wasa_july_august_2015

80 *Steps being taken to fix Sebokeng sewer scheme*. <https://www.sanews.gov.za/south-africa/steps-being-taken-fix-sebokeng-sewer-scheme>

While the Sebokeng problem now appears to have been resolved, with the blockade lifted, the broader problem is now so serious that leading engineering organisations are warning that it threatens the whole construction industry. The CEO of the South African Federation of Civil Engineering Contractors believes that the unrest often witnessed at construction sites is driven, to a degree, by the desire of the surrounding communities to become involved in and gain economically from projects in their area.

“We cannot dismiss that. These expectations are genuine and have to be met...On the other hand, you see violence driven by gangs operating mafia style. Even worse, they are often alleged to be linked to local, provincial and national political figures.”⁸¹

It is increasingly common for demands to be made for additional allocations of funds to the ‘community component’ of the project. These demands are often unrelated to any actual work done and are effectively demands for bribes. They are also sometimes presented as a protection fee, accompanied by threats - and practice - of intimidation and violence against project staff. It is particularly difficult for public sector contractors to respond to since their accounting regulations do not allow for such arrangements, as the project managers for the Clanwilliam dam project found.⁸²

Water projects –a pipeline for political funding?

The cases presented do suggest that there is a connection between corruption in water projects and the funding of political activities and that this influences the approach taken and choices made. This is not an issue limited to South Africa.

However, the question this raises is whether the water sector is used as a vehicle to fund political activity. Nomvula Mokonyane has formal ANC responsibilities for election processes and has been cited in the Commission of Inquiry into Allegations of State Capture (Zondo Commission) for receiving material support from the infamous Bosasa company. The incidents involving DGs Sirenya and Yako, who were dismissed when they sought to block large ICT contracts, happened in election periods.

The Mpumalanga municipal budget transfers also occurred in the run-up to an election at a time when the premier (now the deputy president) was widely seen to be consolidating his political position and preparing for higher office.⁸³ The *New York Times* explicitly claimed that “Using public funds, especially those earmarked for education, Mr. Mabuza and his allies built one of the most powerful political machines in the country, turning Mpumalanga ... into the ANC’s second-biggest voting bloc”.⁸⁴

As in so many cases of high-level corruption in South Africa, there are many anecdotes but little firm evidence. There is, however, a clear correlation between incidents of large scale corruption and political activity.

81 Construction industry in rapid decline as work wanes, ‘mafia’ takes over, warns Safcec. <http://www.engineeringnews.co.za/article/construction-industry-in-rapid-decline-as-work-wanes-mafia-takes-over-warnssafcec-2019-04-08>

82 Water Affairs irregular, fruitless & wasteful expenditure & accruals, with Minister: hearing 3. <https://pmg.org.za/committee-meeting/24880/>

83 The case against Deputy President David Mabuza. <https://www.news24.com/Analysis/the-pending-case-against-deputy-president-david-mabuza-20190530>

84 South Africa’s Deputy President, Accused of Corruption, Faces Uncertain Future. <https://www.nytimes.com/2019/05/22/world/africa/south-africa-david-mabuza.html>



3.3 TAKING CONTROL OF INSTITUTIONS

Institutions – weak or deliberately weakened?

A frequent concern in South Africa – and many other countries where the public institutions perform poorly – is their lack of institutional capacity. The weakness of this diagnostic is that it assumes that there is a desire at leadership level to have strong and capable institutions. The evidence from DWS cases is that efforts to strengthen the administrative leadership have been systematically undermined by political heads when compliance with the rules became an obstacle to their agendas.

The auditor-general, in his report on the state of the DWS, made specific reference to the rate of turnover of directors-general and chief financial officers.

There is **significant instability at leadership level** within the DWS. There has been a significantly high turnover rate relating to the director-general (DG) position. Over the past four financial years, the DWS has gone through four different DGs and/or acting DGs – most of the time, this position has been filled in an acting capacity. This adversely affects the programmes (performance) and the internal control environment of the DWS. Three deputy directors-general (DDGs) were also placed on suspension and returned to work without any evidence that investigations had been conducted and/or concluded. There were also three resignations at this level. Furthermore, there are currently five acting officials at these levels, which is very high.

No.	Minister	Name of DG	Acting	Months as DG
1	Ms B Sonjica	Pam Yako		4
2	Ms B Sonjica	Nobubele Ngele	A	15
3	Ms BE Molewa	Trevor Balzer	A	15
4	Ms BE Molewa	Maxwell Sirenya		12
5	Ms BE Molewa	Trevor Balzer	A	16
6	Ms Mokonyane	Trevor Balzer	A	4
7	Ms Mokonyane	Margaret-Ann Diedericks		21
8	Ms Mokonyane	Sifiso Mkhize	A	6
9	Ms Mokonyane	Dan Mashitsho		7
10	Ms Mokonyane	Sifiso Mkhize	A	9

Turnover of directors-general at the Department of Water and Sanitation - AG report to the joint committee of inquiry into the functioning of the Department of Water and Sanitation. March 2018

The AG's report also noted that between 2009 and 2017, the average length of tenure of a DG was just 11 months, with five of the nine incumbents in that period acting appointees. Over this period, three of the four formally appointed DGs resigned - although this could indicate either unacceptable pressure from the minister or acknowledgement of failure to perform.⁹¹

While appointment of DGs is done in consultation with the presidency, there is no formal accountability required when a DG leaves prematurely, opening the door to ministers to apply pressure on incumbents with whom they disagree.

Weakening oversight mechanisms

An essential part of weakening institutional capacity so as to remove constraints on illicit behaviour is to weaken the mechanisms used for oversight of institutional performance. South Africa's water legislation requires ministers to collect information on both water services and water resources and to provide that information to the public. The decision to stop the production of the Blue, Green and No Drop reports would appear to be a deliberate

91 Report of the auditor-general to the joint committee of inquiry into the functioning of the Department of Water and Sanitation: Challenges facing the water and sanitation portfolio. https://www.corruptionwatch.org.za/wp-content/uploads/2020/02/180327AG-SA-Challenges_Water_Sanitation.pdf

contravention of that requirement. Preparation of the National Water Resource Strategy, which is explicitly required by law to be produced every five years to explain how water security is to be sustained, is more than three years late.

In addition, the department took the unusual step of repeatedly contesting the findings of the auditor-general about the state of DWS's finances. As the AG explained:

“The trend of contestation to our audit findings continued and intensified in the previous audit cycle. Management contested our conclusions in the 2015-16 audit cycle ... The claims of the DWS were dismissed and the conclusions reached by the auditors were found to be factual, appropriate and supported by adequate work performed. ... In the 2016-17 audit cycle, management contested the audit outcomes of both the DWS and the WTE, which were again taken through the independent review process. The conclusions and conduct of the auditors were once again upheld The contestation and pressure placed on the audit teams, without sufficient grounds, appear to be motivated by the DWS wanting to avoid negative audit outcomes and disclosures of irregular as well as fruitless and wasteful expenditure. The service providers to the DWS where irregular and fruitless and wasteful expenditure were noted also threatened the AGSA with legal action.”⁹²

Threats were also made against the AG's staff at Rand Water:

“Makwetu told MPs that senior employees from Rand Water, a department of water and sanitation entity, intimidated his staff in August when they told them that that the AG's audit findings “are costing them their bonuses”.”⁹³

While the issues at Rand Water did not appear to indicate corruption, the attitude towards the AGSA was a matter of concern and perhaps reflected the attitude of officials in the sector towards the role of the AGSA.

Board membership – a duty or a privilege?

Another ministerial prerogative is to appoint chairs and members of the boards of institutions under their control. In the case of the DWS, this includes the members of water boards, the TCTA, the Water Research Commission and a number of other institutions such as international commissions and committees. Although, again, there are procedures to be followed, ministers can generally control the process and ensure that their preferred candidates are nominated. This provides significant opportunities for patronage since the incumbents receive a useful if not exorbitant financial allowance.

The evidence from the cases has shown that ministers have used board appointments to try to ensure that their wishes are carried out, notably in the case of Lepelle Water, Umgeni Water and the Lesotho Highlands Water Joint Water Commission. Efforts to influence decisions at TCTA and to enable continued control by Dudu Myeni in Mhlathuze through the merger with Umgeni further illustrate the dynamics that this creates.

The implications of these arrangements were made evident in the parliamentary testimony of the CEO of Lepelle Water, when asked how he and the board of which he was an executive director would deal with an illegal directive:

.... “when you are given a legal instruction you can only defy at your own risk because that is insubordination, so directives had to be understood within that context, as a written lawful instruction ... “ (cited above)

‘Insubordination’ is, of course, a revealing word to use in this context – basic corporate governance principles hold that a director's decisions are subordinated to the law and the fiduciary duty owed to the company, while the CEO is accountable to the board. The minister – who is designated the shareowner representative – sets the overall strategic mandate

92 Report of the auditor-general to the joint committee of inquiry into the functioning of the Department of Water and Sanitation: Challenges facing the water and sanitation portfolio. https://www.corruptionwatch.org.za/wp-content/uploads/2020/02/180327AGSA-Challenges_Water_Sanitation.pdf

93 ‘You're costing us our bonuses’: Kimi Makwetu tells of death threats to audit staff. <https://www.timeslive.co.za/politics/2019-12-04-youre-costing-us-our-bonuses-kimi-makwetu-tells-of-death-threats-to-audit-staff/>

which includes specifying the public interest objectives and the trade-off, if any, with efficiency considerations. She should not be issuing instructions to the board, much less the executive management.

The broader challenges of institutional capture

In South Africa's current system of government, ministers have substantial power. In part, this is because functions such as personnel management and procurement that were centralised under the pre-1994 regime have been assigned to individual ministers and their departments.

In addition, departments such as National Treasury and Public Services and Administration (DPSA), that are supposed to maintain oversight over the activities of line departments, have been weakened. In some cases, this is formal – for instance, procurement activities that used to be managed by a central national tender board have now been assigned to departments.

But in many cases, their residual oversight mechanism is often disregarded. So activities such as irregular expenditure that should be reported to National Treasury are simply ignored, with no consequences unless these are discovered when accounts are audited; even then, little or no action is taken. Similarly, departmental reorganisations, which are supposed to be communicated to and confirmed by the DPSA, are made without even a communication.

This lack of administrative discipline has been allowed by the political leadership – the presidency, the transversal departments and the ANC, as the ruling party – either because they were constrained politically by the dynamics of the ANC or because they actually condoned it, for their own purposes. This has contributed to a culture of impunity at ministerial level.

At its extreme, this degeneration of administrative discipline led to the phenomenon of state capture.

The impact of this has been seen in the water sector with, amongst others, the delays to the Lesotho Highlands Water Project and the Clanwilliam Dam, and the efforts to promote the financially non-viable Umzimvubu Dam and Mangaung pipeline projects.

A characteristic of many of the cases raised is how senior managers – including board members and CEOs or DGs – if not actively involved in corruption, turned a blind eye to fairly obvious illegalities. One reason for this was often that their jobs, if not their lives, were at risk if they raised awkward questions. Another reason is that, even if they reported their concerns and provided evidence of them, there would be no consequences for the people responsible.

This comes back to the nature of South African society. In countries with fully developed economies, there are alternatives for senior professionals who leave an institution – there is even often sympathy for those who leave for reasons of principle. In South Africa, with high levels of unemployment, there are limited alternative options for employment with anything like current levels of pay. Many of those jobs are in professional fields dependent on public sector work, for which good relationships with government are critical.

In too many cases, officials have had to balance their job security against their principles; and for many, understandably, the cost of principles is simply too high.

STRATEGIES FOR CORRUPTION – A STRUCTURED SUMMARY

Corruption strategies in procurement		
Strategy	Approach and risk	Some cases referenced
Intervention in pre-qualification and qualification processes	Manipulation of tender invitations to benefit preferred companies	<ul style="list-style-type: none"> • EOH's move from SAP to specialised water services • Lesotho Highlands Water Project
Intervention at tender evaluation and adjudication stage	Manipulation of the evaluation and award process to enable preferred companies to be selected	<ul style="list-style-type: none"> • Ekurhuleni Meters - Regulation 32 abuse • Mpumalanga's municipal budgets
Pre-approved panel strategy	Mechanism to bypass tender procedures, promoted as a way to improve organisational efficiency	<ul style="list-style-type: none"> • Giyani Water Project • The bucket toilet tender stink
Emergency strategy	Use of emergency legislation as mechanism to bypass tender procedures and avoid scrutiny of the capabilities of preferred candidates and the cost of alternatives	<ul style="list-style-type: none"> • Giyani Water Project • How desalination dreams derailed NMB water supply • How water tankers cause taps to run dry • The bucket toilet tender stink
Regulation 32 piggy-backing strategy	Mechanism to bypass tender procedures, by using procedures of other organisations to reduce bureaucracy	<ul style="list-style-type: none"> • Ekurhuleni Meters - Regulation 32 abuse • Mhlatuze-Mgeni merger rings alarm bells
Construction contract strategy	Organisation of oversight systems to allow overpayment to complicit contractors	<ul style="list-style-type: none"> • Lesotho Highlands Water Project • Giyani Water Project
Turnkey strategy	Bundle design and construction (and sometimes, finance and operation) into single contract to gain control over operational procurement	<ul style="list-style-type: none"> • EOH's move from SAP to specialised water services • Giyani Water Project • Mangaung and the Gariiep pipeline • Sweetwaters, Kanana Park Extension 6 - a prologue
Preferences for local economic opportunities or protection rackets?	Local preferences used to gain control of patronage opportunities and to extort payments from contractors	<ul style="list-style-type: none"> • Raising Clanwilliam Dam • Lesotho Highlands Water Project • Sweetwaters, Kanana Park Extension 6 - a prologue
Preferential procurement	Abuse of requirements for preference to be given to black companies, personnel or community involvement	<ul style="list-style-type: none"> • Giyani Water Project • EOH's move from SAP to specialised water services • The bucket toilet tender stink • Lesotho Highlands Water Project

HIGHER LEVEL STRATEGIES:

Influencing policy and regulatory decisions, taking control of institutions

Influencing policy and regulatory decisions		
Strategy	Approach and risk	Some cases referenced
Control over procurement processes	Opportunity to alter recommendations and bypass procedures	<ul style="list-style-type: none"> ◆ Mpumalanga's municipal budgets ◆ Giyani Water Project
Regulatory decision-making	Opportunity to benefit preferred companies, block others and extort payments	<ul style="list-style-type: none"> ◆ Mining licences, pollution, and public vs private interests
Controlling public oversight of sector performance	Suppression of performance data reduces accountability	<ul style="list-style-type: none"> ◆ Blue, Green and No Drop reports
Determining project strategy	The approach taken to project promotion determined by personal interests, negatively affecting public outcomes	<ul style="list-style-type: none"> ◆ Giyani Water Project ◆ Lesotho Highlands Water Project ◆ Mangaung and the Gariep pipeline ◆ How desalination dreams derailed NMB water supply ◆ EOH's move from SAP to specialised water services ◆ The War on Leaks ends in defeat



Taking control of institutions (abuse of power)

Strategy	Approach and risk	<u>Some cases referenced</u>
Design of corporate structures to facilitate corruption	Public policy priorities and approaches undermined	<ul style="list-style-type: none"> ◆ EOH's move from SAP to specialised water services ◆ Sweetwaters, Kanana Park Extension 6 - a prologue
Signing off of procurement decisions	Procurement processes, principles and regulations will be ignored	<ul style="list-style-type: none"> ◆ Mpumalanga's municipal budgets ◆ EOH's move from SAP to specialised water services ◆ Giyani Water Project ◆ The bucket toilet tender stink
Appointment of key staff	Honest staff sidelined and others appointed to abet private interests	<ul style="list-style-type: none"> ◆ TCTA and the Mzimvubu project ◆ Mhlatuze-Mgeni merger rings alarm bells
Removing key staff	Enables principal to appoint staff to serve personal rather than public interests	<ul style="list-style-type: none"> ◆ EOH's move from SAP to specialised water services ◆ Mhlatuze-Mgeni merger rings alarm bells ◆ Lesotho Highlands Water Project

CHAPTER 4

What is to be done?



Prioritising project development	Projects prioritised to serve personal rather than public interests	<ul style="list-style-type: none"> ◆ Mangaung and the Gariep pipeline ◆ The chickens of state capture come home to roost
Delegations and directives	Legal powers abused to bypass procurement processes and financial controls	<ul style="list-style-type: none"> ◆ The War on Leaks ends in defeat ◆ Giyani Water Project

WHAT IS TO BE DONE? Confronting two ‘wicked problems’

Corruption in the water sector has damaged lives and livelihoods in many communities. Resources that could have improved services have gone into private pockets and been used to consolidate the power of ruthless politicians. The performance of water service institutions has deteriorated so seriously over the past decade that ministers stopped providing the data. Many strategies used to achieve personal and political benefit at the expense of the public have been documented.

The question that must now be answered is: what can and should be done to turn the situation around?

The challenge is that both corruption and sustainable water management are ‘wicked problems’, not because they are evil but because they have no easy solutions that are acceptable to all concerned. According to the social scientists and planners who first described the concept, they are

“... social system problems which are ill-formulated, where the information is confusing, where there are many clients and decision makers with conflicting values, and where the ramifications in the whole system are thoroughly confusing.”⁹⁴

There are no easy solutions, but a range of actions on many fronts can make a difference

Corruption in South Africa is evil, in that it preys disproportionately on the most disadvantaged communities and individuals, it undermines economic growth and development, and it corrodes democratic governance systems which rely on trust between those in authority and the citizenry. But it is also wicked because it is so difficult to find ways to address it, given the interplay of contesting interests and priorities in complex human societies.

The provision of water also has wicked characteristics. There are usually many different ways in which it can be provided and many different users, each of whom has their own needs and preferences. Once supply infrastructure has been built, it must be operated and maintained and the initial decisions on how to provide it can have long-term implications on the viability of the service. But if users’ circumstances and preferences change, the original solution may no longer be workable and, as we see every day in South Africa, supplies fail – leaving communities desperate.

In such situations, it is concluded that “the political context is crucial, that argumentation must be transparent and robust, and that policy interventions may have consequences that cannot be easily controlled in open and highly pluralised social systems.”⁹⁵

Put simply, there are no easy solutions, but a range of actions on many fronts can make a difference.

94 Crowley, K. and Head, B.W., 2017. The enduring challenge of ‘wicked problems’: revisiting Rittel and Webber. Policy Sciences, 50(4), pp.539-547

95 Crowley, K. and Head, B.W., 2017. The enduring challenge of ‘wicked problems’: revisiting Rittel and Webber. Policy Sciences, 50(4), pp.539-547

The context for action

The first step is to recognise the context. Today's corruption cannot be divorced from South Africa's past. While bribery, nepotism, self-enrichment, and state capture were all present pre-1994, the very governance systems of colonialism and apartheid were corrupt at their heart – systems in which public power was used to promote and protect the interests of a small part of the population at the expense of the rest. In addition, a selected group of large domestic and multinational corporations were granted privileged access to public services and contracts and regulatory support.

In water, huge public resources were spent to provide supplies to cities and (white) farmers with a trickle to the homelands, apartheid's limited and cynical attempt to create and privilege a tiny rural black elite. The basic needs of the majority of the population were largely ignored – in 1994, more than a third of black South Africans did not have a minimally adequate water supply.

This inheritance has massively shaped the character of corruption in democratic South Africa and the measures capable of countering it. A new democratic government immediately had to extend basic services to the black majority. This required new infrastructure and new institutions to operate and maintain it.

The massive extension of public services faced severe human resource constraints. These are apparent in the water sector which requires specialised technical skills to build and operate large capital-intensive infrastructure as well as commercial and management skills to run the organisations required. This programme of service provision immediately created risks, since infrastructure construction and provision of sophisticated IT and business services are notoriously vulnerable to corruption.

But an equally pressing challenge was to enable the majority of the population to participate in the economy. Inevitably, employment in state organisations was one of the key opportunities in which rapid progress could be made. Inevitably, there was pressure for the public sector to create more jobs and political pressure for politically connected people to benefit.

Another priority for the new democratic government was to increase the participation of black owned businesses in the economy more generally. Preferences introduced under the general framework of Black Economic Empowerment (BEE) became the flagship programme to achieve this goal. Government sought to use its procurement budget to redress centuries of colonial and apartheid exclusion by privileging black-owned firms in public procurement.

There is nothing unusual or intrinsically corrupt about a government using its power as a consumer to achieve its social and economic objectives through preferential procurement. But as with any elaborate regulatory scheme, it is vulnerable to corruption, the more so when the decision makers are compelled to balance commercial considerations and public interest considerations. A particularly pernicious form of corruption of South Africa's procurement preferences is the practice of 'fronting' whereby existing white-owned firms, incentivised to deracialise their ownership and



their supply chains in order to be eligible for public procurement contracts, seek to reward black individuals or black owned firms who can lend the white owned firm their identity in exchange for a highly leveraged minority share in the white owned business and no semblance of control or substantial participation.

As a result, there is ample evidence that certain companies gained privileged access to public procurement contracts, often at the expense of other genuinely empowered bidders. Some of these are documented in the case studies in this report. And this practice has been foregrounded in evidence presented to the Zondo Commission.

However, what is even more disturbing is the evidence that some of the inducements organised by individual decision makers have been used to fund political parties. The infamous Chancellor House/Hitachi matter, in which the ANC-controlled investment company facilitated a major contract between Eskom and the Japanese engineering giant in exchange for shares in Hitachi's South African operation, set a benchmark for this kind of behaviour.⁹⁶ It provided early evidence of the ANC's willingness to leverage its political power to influence government procurement contracts to support party interests. And this approach was replicated at a smaller scale in many of the cases documented in the water sector – and indeed, beneficiary companies' contributions to political parties have been openly acknowledged.

This has created a dynamic that has impacts well beyond the manipulation of procurement. It has reached the stage where it has fundamentally affected public decision-making, as acknowledged by former president Kgalema Motlanthe who stated, as far back as 2007, that: "This rot is across the board. It's not confined to any level or any area of the country. Almost every project is conceived because it offers opportunities for certain people to make money."⁹⁷

The dangers have thus long been recognised – which is one reason that the National Development Plan⁹⁸ devoted an entire chapter to 'Fighting Corruption'. But these dynamics also have an impact at an individual and social level. The challenge of enabling a prosperous black middle class to emerge and flourish merits exceptional measures, such as BEE. Its success is essential to the country's political stability and sustainability. But members of this emerging class, with no inherited wealth are very often supporting a substantial number of less well-off family and community members as dependants, a huge financial burden, commonly referred to as a 'black tax'.⁹⁹

Those who have jobs help their extended families and communities however they can. They pay the school fees, electricity and water bills and emergency expenses of many households, which strains the finances of middle-class wage-earners. And there is pressure on them to help find employment opportunities for family members even though, particularly in the public sector, they may be accused of nepotism.

As Joel Netshitenzhe describes, "first generation middle and upper strata" are trying match the artificially high living standards of their white counterparts, without the underpinnings of decades of past racial privilege. "As a consequence, they have to rely on massive debt and/or patronage some then try to acquire the resources by hook or by crook."¹⁰⁰

In this complex environment, in which politicians, individual officials and businesses all benefit from corruption, it is little wonder that the problem has become systemic. A strategic set of responses is required. What is needed to make them effective?

Actions to date

Public procurement is widely recognised internationally as one of the government activities most vulnerable to corruption. This is due to the large sums of money involved, the complex processes and the intersect between public bodies and the private sector. As the cases presented have shown, procurement processes can be undermined by a variety of corrupt practices ranging from manipulating project specifications to bribery during tender award processes.

96 *Hitachi: a settlement payment is not enough.* <https://www.corruptionwatch.org.za/hitachi-a-settlement-payment-is-not-enough/>

97 *ANC and business: soul for sale.* <http://inside-south-africa.blogspot.com/2007/01/financial-mail-ancs-soul-for-sale.html>

98 National Development Plan. <https://nationalplanningcommission.wordpress.com/the-national-development-plan/>

99 *Black Tax: Burden or Ubuntu?* Niq Mhlongo (Ed), Jonathan Ball 2019

100 Netshitenzhe, J. (2012) *Competing identities of a National Liberation Movement and the challenges of incumbency*, ANC Today 12

A further difficulty is that, because of its importance and reach in the economy, public procurement is seen as a powerful policy lever to support transformation goals, ranging from improved gender and racial representivity in the economy to support for local economic development and nascent national and regional industrial development. The challenge that this presents is that the integration of these policy goals further complicates already complex procurement processes.

In 2003, national government's tender processes were decentralised to departmental level in order to empower departmental accounting officers and enable them to be held accountable for their expenditure.¹⁰¹ However, this achieved limited success, not least because of the complicated policy framework within which each department had to work.

Many of these issues were addressed in the 2012 National Development Plan (NDP). As the NDP says,

“The state’s procurement expenditure must be used to push transformation, but it also needs to be realistic about the ability of creaking procurement systems to balance multiple priorities.”¹⁰²

Action has been taken in many of the cases presented. It is encouraging and relevant that much of the information about corruption in the water sector that is in the public domain came as the result of the efforts of internal whistle-blowers and investigative journalists. Although in many water sector institutions the rot has gone so deep that the challenges appear overwhelming, there are ways forward. A further encouraging finding is that, despite the difficulties, many competent and dedicated public officials continue to work to maintain the country’s water security and to resist attempts at corruption, often at some cost to their careers.

Amongst formal structures, the work of the auditor-general stands out; many of the media reports were derived from his team’s initial investigations. And, as far back as 2012, the Special Investigating Unit was directed by the president to investigate allegations of procurement and contract management irregularities in DWS. Subsequently, in 2016, 2018 and 2019, further presidential proclamations directed it to investigate water-related irregularities involving DWS, Lepelle and Umgeni Water Boards as well as the Gauteng Provincial Department of Housing and a number of municipalities. The total amount involved was estimated at over R4-billion.¹⁰³

Some of those investigations have been completed. The SIU has reported that it has taken legal action to terminate contracts and recover funds from the companies involved, and has passed information to the National Prosecuting Authority and tax authorities to consider criminal action. However, although some DWS officials have resigned and others faced internal disciplinary action, there have been few serious consequences, even where the SIU has launched legal action to recover funds.¹⁰⁴

While the matters are complex, this delay raises questions about the effectiveness of these actions. A particular problem is that the framing of the presidential proclamations does not address the accountability of the political leadership in the institutions concerned. In many cases, the formal corrupt action was taken by subordinates, who were presumably acting under political direction; this complicates any direct prosecution. At this level, perhaps the most notable consequence has been the removal of Nomvula Mokonyane first from the water portfolio and then from Cabinet. But this is a relatively minor penalty since she retains the considerable benefits of a retired minister.

Learn Lessons

It is important to learn from cases in the water sector where corruption has been successfully constrained. These cases illustrate the circumstances in which this occurs and measures that can be taken to reduce, if not eliminate, corruption:

101 <http://www.treasury.gov.za/divisions/ocpo/sc/Guidelines/overview.pdf>

102 National Development Plan, National Planning Commission, The Presidency, 2012.

103 SIU, Parliamentary presentation to SCOPA: SIU investigations: progress report; Department of Water and Sanitation challenges: Treasury briefing, with DWS Minister. <https://pmg.org.za/committee-meeting/27686/>

104 SIU annual report 2018-19

Effective operational management systems

The management systems put in place by Joburg Water not only improved the utility's performance but also made petty corruption more difficult. The system would not issue material or tools to any plumbers or foremen unless it was for a registered job card. This discouraged lobbying by councillors for priority attention (and, sometimes, for illicit private work) because it compelled them to make those requests through a call centre to register and record the job.

The threat of consequences

The criminal prosecution of both officials and private companies following rampant corruption in Phase 1A of the Lesotho Highlands Water Project certainly appeared to change behaviour - Phase 1B was completed in 2004, close to its planned time and budget. Although there were some incidents of corruption (which also led to criminal charges), there were fewer cost increases due to the contract variations and claims that are often abused by contractors.

Action by governance structures

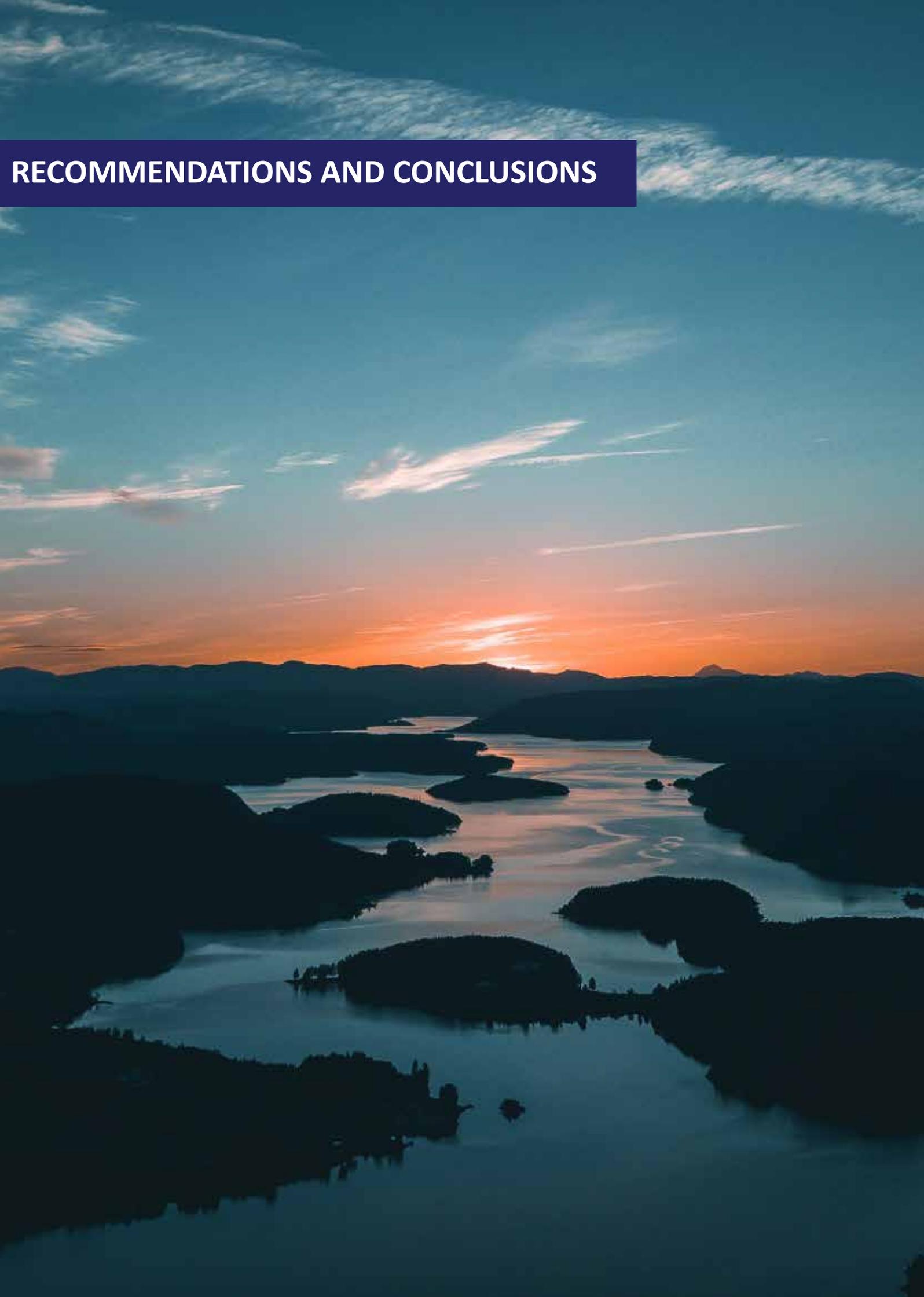
In the Mzimvubu project, the board of the TCTA, correctly exercising its fiduciary responsibility, resisted attempts to promote inappropriate Chinese funding, despite energetic efforts by the minister. While there was not yet any direct evidence of corruption, efforts to bypass a feasibility study that would have clarified responsibility for the repayment of the loan suggested gross negligence or a deliberate attempt to flout procedures. The explicit instruction from the board to the chief executive prohibiting him from signing a loan agreement in China prevented a potentially wasteful project from proceeding.

Governance arrangements that constrain centralised powers

During current preparations for Phase 2 of the Lesotho project, efforts by Nomvula Mokonyane to alter project arrangements to introduce a favoured consultant failed, and the integrity of the procurement process was retained. This was largely the result of the institutional arrangements set up by agreement with funding agencies, who had a clear interest in avoiding a repeat of the difficulties (and reputational damage) experienced in the earlier project phases. The governance arrangements prevented the process from being taken over by one or two powerful parties.



RECOMMENDATIONS AND CONCLUSIONS



RECOMMENDATIONS

The following recommendations are made for the water sector on the basis of the findings of the report and the lessons that have been learnt. They start with an overarching strategic approach and then focus on more specific interventions.

Designate the water sector as an ‘island of integrity’

Service delivery problems in the water sector, the impact of corruption on delivery of water, and the related social and economic impacts, provide strong grounds for government prioritising anti-corruption efforts in this sector, for designating water an island of integrity.

Water and environmental protection are rights guaranteed by the South African Constitution and international law. South Africa’s water resources are constrained by geography and exacerbated by climate variability and change. Even in a perfect governance environment we would still face water problems. South Africans simply cannot afford the added burden of corruption in a sector whose product is a vital determinant of health and life (drinking water), dignity (sanitation) and economic prosperity.

The aim of designating the sector as an island of integrity is to focus both political leadership and citizens on the need to keep corruption out of water in order to keep the taps flowing and the rivers clean. The designation should be reflected in the choice of minister and the appointment of senior departmental officials and in the boards and executives responsible for water agencies. They should be people of unimpeachable integrity and technical competence.

Civil society should be encouraged to be vigilant in this area, and supported when they identify issues that need to be addressed – the Cape Town experience has demonstrated the willingness of the public to respond collectively to a pressing water crisis. This process will draw on all institutions of governance, at national, provincial and local level. The Auditor-General and law enforcement institutions should support the processes of tackling corruption in the sector and government’s communication agencies must reflect this.

Ending impunity – instilling a culture of consequences

It will be difficult to end corruption in the water sector in the current climate in which flagrant abuses go unpunished. Procurement rules are broken with impunity and illegal directives from political heads are not questioned. Findings of corruption are made but no effective action is taken against those concerned. The absence of consequences gives perpetrators of corruption an incentive to continue; based on experience, they can expect to get away with it.

A culture must be established in which it is expected that misconduct will have consequences. At a formal level, this is the responsibility of the Auditor-General and the broad family of law enforcement authorities, including agencies such as the Special Investigating Unit.

The AGSA has played a significant role in exposing massive irregularities in the management of water. However, its findings have, as in many other government agencies, been simply ignored. The recent amendments to the Public Audit Act (Public Audit Amendment Act No. 5 of 2018) give the AGSA certain powers to enforce its findings. These powers should be actively used in the water sector as part of the broader integrity campaign.

Rampant irregularity in the management of public resources should always be treated and investigated as potential corruption particularly where large-scale irregularities repeatedly occur. In particular institutions, public officials are implicated in serial irregularities and specific firms regularly benefit from these irregularities. Such patterns of irregular conduct should be seen as a red flag for corruption.

Furthermore, given the ubiquitous presence of political appointees in so many alleged instances of grand corruption, the likelihood of political corruption should always be considered by the investigative authorities. Indeed, the authorities could do well to open investigations into all large procurement contracts concluded during the ministerial tenure of Nomvula Mokonyane.

The designation as an island of integrity should be reflected in institutional arrangements that reinforce the importance of corruption prevention in the water sector. One useful model may be the establishment of an anti-corruption forum along the lines of the existing Anti-Corruption Health Forum, led by the SIU. This forum brings together key stakeholders in the public healthcare system including law enforcement agencies, relevant government departments and agencies, representatives of the private sector, regulators and civil sector organisations active in healthcare and in combating corruption. Reports of corruption and gross irregularities are submitted to the forum and then allocated to the agency best placed to address them. The involvement of the AGSA and other Chapter 9 institutions would further strengthen its role.

A similar initiative has recently been launched to address the problems of the so-called construction mafia, which has disrupted more than 75 projects valued at over R25-billion, nominally seeking local jobs and sub-contracts. Action is being taken within the framework of the Prevention of Organised Crime Act and has involved the Asset Forfeiture and Anti-Gang units of the National Prosecuting Authority, working together with the South African Forum of Civil Engineering Contractors and other engineering organisations.

Appointments – no honest institutions without honest and ethical people

There are two important requirements for the water sector to become an island of integrity. Firstly, honest, ethical and committed leaders must ensure that recruitment and new appointments to their organisations reinforce these values. Secondly, processes must be put in place to enable them to remove those who break the rules for corrupt purposes. Both appointment and disciplinary processes are important mechanisms for dealing with impunity since they establish the guiding values of the institutions concerned.

The cases reviewed have demonstrated how both these processes have been abused. Trivial or trumped-up charges have been used to remove honest officials from office where they have been obstructing corrupt activities. This has allowed the appointment of individuals who, if not actually complicit, are willing to ignore the corrupt designs of those who appoint them. Similarly, where efforts have been made to act against corrupt officials, they have been protected from action through the manipulation of disciplinary processes.

Poorly managed, dysfunctional and captured disciplinary and human resource systems are common across South Africa's public sector. In order to support the development of the water sector as an island of integrity, consideration should be given to the effective involvement of external agencies such as the Public Service Commission or civil society organisations in panels responsible for appointment and discipline.

There are also challenges related to the appointment of the boards of the public agencies that are part of the water minister's portfolio. These are usually made by the minister with the concurrence of Cabinet, but it is well documented that political affiliation rather than competence or integrity has been the determining factor in appointments. It is thus suggested that recommendations for such appointments should be made in consultation with panels deliberately constituted to ensure a focus on the appropriate considerations and with the power to block inappropriate appointments.

Procurement

The 2012 National Development Plan noted that:

“The state's ability to purchase what it needs on time at the right quality and for the right price is central to its ability to deliver on its priorities. Public-sector procurement expenditure also needs to be used to drive national priorities such as localisation and economic transformation. Procurement systems tend to focus on procedural compliance rather than value for money, and place an excessive burden on weak support functions.”

To improve value for money while minimising the scope for corruption the NDP proposed focusing on five areas:

- Differentiating between different forms of procurement (that is, treating construction projects differently to, say, procurement of medicines or basic security and cleaning services);
- Elevating trade-offs above the project level (so providing incentives for local production at producer level rather than through tenders and encouraging a range of mechanisms to encourage training and job creation);
- Build relationships of trust and understanding (supply chain officials need to understand the sector they are dealing with to ensure appropriate approaches are taken);
- Build enabling support structures (specifically to professionalise supply chain managers so that they support rather than seek to replace specialist technical professionals in the procurement process);
- Ensure effective and transparent oversight.

On this latter point, specifically in relation to corruption, the NDP highlights the importance of creating **a transparent, responsive and accountable public service**.

“State information, including details of procurement, should be made openly available to citizens. Furthermore, an information regulator should be established to adjudicate appeals when access to information requested is denied.”

Some organs of state already make substantial amounts of procurement data public, though much more could be done to systematise the process. However, at present the primary corruption challenge faced by South Africa is the systemic capture of parts of the state apparatus and disregard for procedures. Detailed reform of procurement systems will not be appropriate until greater control is gained over public financial management in this regard.

Once this has been achieved, there are many systems that have been proposed and trialled elsewhere that could be of value to further strengthen the sector. These include a variety of open contracting models. Open contracting seeks to mobilise participation from the private sector and civil society to achieve greater accountability within public procurement.

Open contracting recognises that greater transparency from government is insufficient – accountability requires that the private sector compete fairly and that civil society monitor and analyse the public procurement process. The publication of procurement information, in a useable, standardised way cannot in itself bring about greater accountability – the monitoring and analysis of such information by civil society is crucial. Methods used include integrity pacts, e-procurement, data standards, and red-flag monitoring.

Integrity Pacts are mutual commitments between public and contracting parties to refrain from corruption and guarantee transparency during a procurement process. An independent third party, usually a CSO, is given access to documents and procedures and ensures adherence to the integrity pact.

E-procurement envisages moving away from a paper-based procurement system so that the process takes place on a publically available platform. At the very least it requires the publication of procurement information on an e-procurement platform.

Open contracting data standards prescribe standards for what information should be published and how. The use of this standard ensures that there is uniformity and standardisation of data which improves data quality and allows for comparison and analysis.

Red flag monitoring uses algorithms to analyse data and pick up anomalies. A set of procurement norms are built into the software and when a procurement practice violates a norm, the system generates a red flag notification. Members of civil society are then able to investigate this further in order to determine whether the deviation amounts to corruption or non-compliance with procurement law.

A word of caution in approaching procurement reform: one response to growing corruption is to supplement the rules governing systems like procurement. But such measures often fail and may make the situation worse. In weak institutions, cumbersome compulsory rules bring institutions to a standstill, with officials unwilling to take actions that may be considered illegal. And corrupt officials who break the rules with political cover have used trivial infractions to attack honest people who question their behaviour. The guiding principle should be to ensure that there are clear lines of responsibility, simple rules that everyone can follow and procedures that allow deviations to be identified and acted against.

In addition, experience in the water sector teaches us an important lesson, namely that political appointees, such as the minister and board members of public agencies, should not involve themselves in procurement appointment decisions and where they insist on doing so, it should be treated as a red flag for corruption.

Ministerial and board involvement is clearly appropriate at the strategic stage of a large procurement – the decision to build a large dam or a power station, or purchase a fleet of airplanes. But they have no call to engage with the operational decision about to whom contracts should be awarded; if they do, the inference is that they are offering a supplier a political favour in exchange for a consideration.

Transparency in regulatory decisions

There is a need to promote greater transparency in the exercise of regulatory decision-making by ministers and senior officials. As an example, the minister of water is empowered to issue directives to institutions such as water boards and the TCTA. These have enabled ministers to bypass government's planning and budgetary procedures. If some of the contentious directives described in this report had been publicised at the time, many of the more gratuitous abuses could have been spotted and stopped at an earlier stage. A simple amendment to the relevant legislation could require such directives to be gazetted by the minister and reported in the annual reports of the organisations concerned.

Environmental factors that must be addressed

The roots of corruption in the water sector are not in the sector itself but in the wider society. Corruption will not successfully be combated unless these are also addressed. Law enforcement agencies are principally responsible for confronting impunity and are dealt with in a separate recommendation.

Preferential procurement

The vexed issue of political party funding is also dealt with separately. On BEE, corruption of that vital social programme doesn't necessarily presuppose root and branch reform, much less the scrapping, of BEE. All regulatory frameworks are vulnerable to corruption, and the more elaborate and far-reaching the programme, the greater the opportunities for rent-seeking and corruption.

While this may necessitate an evaluation of regulations and an assessment of the social benefits achieved as a result, it should not imply rampant deregulation. We have no doubt that the social benefits of BEE justify the continuation, even intensification, of the programme. However, what is implied is that the operation of elaborate regulatory frameworks should be closely policed, particularly at key decision-making points.

We also do not doubt that the savings in reduced instances of corruption would pay for increased expenditure on particularly close scrutiny of the application of BEE transactions. It would also enhance the credibility of BEE.

Regulation of political parties

The funding of political parties offers obvious opportunities for extending the influence of money over politics and is a much discussed issue in South Africa and in other democracies. In South Africa this has culminated in the passing of the Political Party Funding Act of 2019. This act has been waiting for the president to set it in motion for over 12 months because, while it has been signed into law, a date for its implementation has not yet been announced.

However, recent controversies serve to foreground important money/politics relationships that are not covered by an Act that confines itself to political party funding. Foremost amongst these is the funding of internal political party leadership contests. In a country dominated by a single

party, these contests may be far more important than the national elections. The inescapable conclusion points to the need to consider general regulation of political parties and not only regulation of the funding of parties.

The experience of Nomvula Mokonyane's reign at the DWS highlights a particular challenge of managing the personal/political/financial interface. As ANC local government elections organiser in 2016, she was quoted as saying that the ANC had spent R1-billion on that campaign – without explaining where the money had come from. She was also active at the ANC's 2019 national conference where factional funding played a significant role in the outcomes.

Simultaneous responsibility for managing a large party programme that demands significant funding and executive responsibility for a government department that has a large procurement budget supports an inference that the state responsibilities are being abused to support party responsibilities.

This supports our recommendation that ministers be prohibited from participation in procurement decisions. Further consideration may well be given to regulating the role of party office bearers in the management of state assets.

Educate the private sector

Too often, private business is seen as the victim of corruption. Bribes are paid and tender awards accepted with the excuse that such practices are unfortunately what is necessary to get the work. This attitude has to be challenged. Private sector bidders that enter into such irregular contracts need to know that they are breaking the law and placing their businesses at risk.

Companies have a legal duty to ensure that correct procedures have been followed in the award of a public contract and can be severely penalised if they don't. A recent high court judgement confirmed by the Supreme Court of Appeal and the Constitutional Court, ordered Cash Paymaster Services to repay to the South African Social Security Agency (Sassa) the entire fee earned on an irregularly awarded contract.

In prior litigation which resulted in the Constitutional Court invalidating the main contract between CPS and Sassa, the court noted:

“As Corruption Watch explained, with reference to international authority and experience, deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences”.

In short, a firm willing the circumvent or ignore public procurement rules and regulations may find itself having to repay its fee and may find itself on the wrong side of a criminal investigation.

Ironically, a circular from the legal firm of which controversial Mokonyane advisor Luvo Makasi is a director, warns its clients about the dangers of circumventing procurement regulations. The circular notes that although service providers may be attracted by the “opportunity to secure work without the rigmarole of an open tender process” they should note that “contracts concluded contrary to procurement legislation and regulations are wholly invalid and cannot be allowed to stand Allowing such contracts to stand would be to allow the conduct (patronage, collusion, nepotism etc.) which the legislation seeks to prevent.” So companies should be wary of “appointment by deviation” from competitive bidding processes. Before accepting such appointments, they should confirm the reasons and “obtain confirmation that its current appointment complied with relevant procurement legislation and regulations”

If more businesses were to follow these recommendations – and if they were to be appropriately penalised when they didn't – it would contribute to an environment less conducive to corruption. It would also reduce their risks.

Support civil society

Last but not least, the work of the media and wider civil society, including NGOs and professional bodies, in uncovering corrupt activities, publicising them and then pursuing them until appropriate remedial action is taken, must be recognised, emphasised and supported.

As a first step, the right of citizens and civil society organisations to access information about public management processes, must be recognised and respected. This must go beyond information about public finances (in which South Africa is regarded as amongst the best global performers) to include information on procurement processes and regulatory decision-making. This will enable civil society to concentrate its limited resources on the analysis of information and engagement with institutions rather than on court battles to obtain the underlying information.

The water sector already has extensive linkages with a variety of civil society organisations at national, provincial and local level and these must be encouraged and supported. The work of these organisations often goes well beyond oversight of government performance and includes participation in water management and education activities. This gives them important operational insights that may not be available through formal government structures and makes them a valuable ally in promoting water security and achieving effective performance of water management functions.



CONCLUSIONS

Water is too important to allow its management to be undermined. Because of corruption, fewer people have reliable water supplies and many, particularly young children, old people, and those with compromised immune systems became ill as a result of drinking unsafe water or because their parents could not keep their homes and toilets clean and hygienic. It is safe to say that corruption in the water sector in South Africa has resulted in deaths.

If the War on Leaks had been properly organised, there would have been temporary jobs for thousands of youngsters that could have led some to useful, recognised training and possibly permanent employment. The money saved by the municipalities could have been used to maintain and operate their water infrastructure, perhaps even reducing the wastewater pollution that is damaging South Africa's rivers.

Providing more reliable supplies would also have helped to keep existing jobs. There would not be threats of company closures in Nelson Mandela Bay Metro or job losses on the chicken farms in Lekwa municipality.

Given these arguments, most people will agree that corruption in the water sector must be tackled. Corrupt activities cannot be allowed to undermine the country's water security. Senior officials must not be allowed to appoint incompetent friends and family members to key jobs if it means that taps run dry and toilets are not provided.

Much of the corruption is driven by wider political and economic challenges in society. Unless these are also addressed, it is unlikely that efforts to improve and enforce procedures and transparency will be enough to change the situation.

A particular focus is needed on the delicate question of political funding. This report has shown the strong likelihood that political parties and politicians are using corrupt money taken from the water sector to fund their political activities. There is evidence that, as a consequence, taps have run dry, rivers have been polluted and South Africans' water security is not being achieved and sustained.

Although many of the worst cases of corruption have been well publicised, those responsible have enjoyed impunity, apparently because of their political status. This in turn is taken as a licence for corruption at lower levels, an infection that spreads throughout the organisations affected.

In this situation, and because the particularly acute impact of corruption in the water sector can be measured in dry taps, lost jobs and polluted rivers, the goal should be to mobilise public opinion to protect society from water sector corruption.

As part of this, the social and economic impacts of corruption in the water sector must continue to be highlighted as part of broader anti-corruption campaigns. The aim must be to promote social values that discourage corruption in order to meet society's water needs.

Our framework recommendation is that the water sector be designated a no-go zone for corruption, an untouchable island of integrity. This should be manifest in focusing the work of law enforcement agencies and of deploying government's community infrastructure to raise awareness of the dire state of our water management system and the role of corruption therein.

Those responsible for appointments to positions in the water management system – including the appointment of the minister – should be seen to be making a particular effort to ensure that only people of unimpeachable integrity are put in charge of this vulnerable, life-giving resource.

Ending corruption will, of course, not solve all the country's water problems. Households will still have to be careful about how they use their water. In economic applications, there will continue to be arguments about where the limited water could best be used, and environmentalists will try to encourage all consumers of water to leave more in the river, to sustain the natural environment.

But an effective campaign to wash corruption out of the water sector could create the environment in which these larger problems can be tackled. It could ensure that water security for all becomes, once again, the primary goal of the institutions of the water sector. And, in doing this, the water sector could provide some guidance and inspiration for the rest of the nation as it navigates through the challenges of the present into a better future.



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