



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

STATUS OF DISCIPLINARY CASES (INCLUDING CASES INVESTIGATED BY THE SPECIAL INVESTIGATING UNIT)

A RESPONSE TO RECENT ARTICLES BY ANGUS BEGG IN THE DAILY MAVERICK

PRESENTATION TO THE PORTFOLIO COMMITTEE ON WATER AND SANITATION

12 May 2022

CONTENTS

1. Allegations made in Daily Maverick articles
2. Advisory Committees appointed by the former Minister
3. Status of the disciplinary cases referred to in the Daily Maverick articles
4. Disciplinary cases related to financial misconduct in DWS over the past 10 years
5. Status of financial misconduct cases referred by the Special Investigating Unit (SIU)
6. Status of cases referred to SAPS by the Department for criminal investigations
7. Status of forensic investigations by the Department's internal audit unit
8. Impact of fraud and corruption on water and sanitation service delivery
9. Conclusions

1. Allegations made in the Daily Maverick articles

Allegations in the Daily Maverick (1)

There have been two articles by Angus Begg in the Daily Maverick regarding disciplinary processes related to financial misconduct in the Department of Water and Sanitation (published on 9 and 30 April 2022). The articles:

- Indicate that Mr Begg is in possession of documents that reveal details of officials' complicity in corruption and financial mismanagement related to water and sanitation projects, running into tens of billions of rands over a decade
- Indicate that *"A whistle-blower frustrated by a lack of action against more than 65 top officials in the Department of Water and Sanitation who were implicated in widespread corruption has given [Mr Begg] access to reports"*
- Indicate that: *"According to the whistle-blower, [former Minister] Sisulu's response was to institute a DWS disciplinary committee [sic], which was tasked with taking disciplinary action against officials implicated in the forensic investigation reports"*
- Indicate that there were *"roughly 65 official charge sheets – either produced or in review by the department's disciplinary committee [sic] after an investigation lasting almost two years"*
- Allege that *"Within a week, the incumbent DWS Minister [Mchunu], came in and closed down the Disciplinary Committee and its work"*
- Indicate that: *"in disbanding the disciplinary committee, Mchunu and the department have chosen to ignore the investigation into his corruption-riddled department, effectively closing the book on two years' digging by a multidisciplinary forensic investigation team [sic], which set out a plan for the clean-rinsing [sic] of the department."*

Allegations in the Daily Maverick (2)

- Indicate that: *Many questions remain for Mchunu, among them why the disciplinary committee's two million files were not handed to the SIU, and what happened to the 65 cases involving senior officials implicated in the leaked documents produced by the disciplinary committee investigations."*
- Allege that the Director General's requesting that Mr Begg share the leaked documents with him suggests that *"The Director General of the Department of Water and Sanitation is thus asking the Daily Maverick for details of an investigation that his own department carried out. ...The leadership of an entire government department at the highest level has ignored and mislaid R36-million worth of critical in-depth investigations conducted by their own department."*
- Indicate that *"Mchunu and Phillips should both – with the latter having this week confirmed that the department is "committed to proper consequence management for financial misconduct" – answer why they didn't pick up where the investigation had left off, ready to pursue their colleagues and comrades through the remaining trusted legal channels available to them."*

As will be illustrated in the following slides, these allegations are misinformed, misleading and provide an inaccurate description of the roles and responsibilities of the Disciplinary Advisory Committee appointed by the former Minister, where it obtained its information from, and what has occurred with investigations since the term of the Disciplinary Advisory Committee came to an end with the term of the former Minister.

2. Advisory Committees appointed by the former Minister

Advisory committees appointed by the former minister

- In November 2019, the former Minister appointed a 'Stabilisation and Efficient Functioning of the Water Sector Committee' for the purpose of advising the Minister and the Director-General on amongst others, general HR, labour relations matters, including the fast-tracking of outstanding, pending and new disciplinary cases. Members were appointed in terms of section 99 of the National Water Act. The committee consisted of 14 members.
- On 7 December 2020, the former Minister disestablished the Stabilisation Committee and appointed a Disciplinary Advisory Committee comprising of 7 members appointed in terms of section 99 of the National Water Act.
- The members of the Disciplinary Advisory Committee were Ms S Shabangu, Adv J de Lange, Ms W Dukuza, Mr D Mgaga, Mr S Mbatsha, Ms M Mokwena, and Mr R Sibiya.
- The former Minister also appointed three other remunerated committees between 2019 and 2021, i.e. the National Rapid Response Task Team, the Water Advisory Committee and Water Services Committee (all appointed in terms of the section 99 of the National Water Act or section 76 of the Water Services Act)

Terms of reference of the Disciplinary Advisory Committee appointed by the former minister

- The terms of reference of the Disciplinary Advisory Committee (as approved by the former Minister) were to **support and advise** the Minister and Director General on:
 - Investigations into maladministration, fraud and corruption, audit findings and any other misconduct related matters;
 - Outstanding investigations and disciplinary cases with the view of ensuring that these cases are finalised within six months;
 - Attend to the backlog of cases as identified by the Auditor-General, with the view of urgently removing the backlog of cases;
 - Ensure the provision of security to those providing evidence, when required;
 - Media and communication with regards to investigation, disciplinary matters and ethical behaviour within the water sector; and
 - Legal related matters in relation to investigations, discipline, communication and integrity related matters.
- It should be emphasized that the role of the Disciplinary Advisory Committee was to **support and advise** the Minister and Director General – the allegation in the Daily Maverick that it was a disciplinary committee tasked with taking disciplinary action against officials is not true – it would have been illegal for an outside committee to play such a role

Role of the Disciplinary Advisory Committee

- After its appointment, **the Department provided the Disciplinary Advisory Committee with a list of all 63 current disciplinary cases** at that time. Most of these cases emanated from Auditor-General findings as well as investigations conducted by the Chief Directorate: Internal Audit's Forensic Unit, Chief Directorate: Risk Management as well as the Special Investigating Unit (SIU).
- The 63 cases provided by the Department to the Disciplinary Advisory Committee included 18 SMS cases and 45 cases below SMS level
- It appears that these are the “roughly 65” cases referred to in the Daily Maverick articles – they were not cases identified by the Disciplinary Advisory Committee – they were cases that the department was already working on, which were reported by the Department to the Disciplinary Advisory Committee
- The role of the Disciplinary Advisory Committee was to monitor the ongoing implementation of disciplinary processes by the Department, not to implement the disciplinary processes
- On an ongoing basis, the Department shared its progress with the implementation of disciplinary cases with the Disciplinary Advisory Committee.
- The role of the Disciplinary Advisory Committee was limited to engaging with the Department's progress reports and providing the Department and Minister with advice and recommendations

Nature of the disciplinary cases provided to the Disciplinary Advisory Committee

The table below summarizes the cases provided by the department to the Disciplinary Advisory Committee in January 2021:

Nature of alleged misconduct	Number of cases
Improper expenditure (Irregular, Fruitless/wasteful and unauthorised expenditure)	36
Gross dishonesty	6
Fraud	4
Theft	3
Assault	3
Misuse of state property	2
Negligence	2
Insolent behaviour	3
Non adherence to policies (other than improper expenditure)	1
Insubordination	3
Total	63

Note: In January 2021 when these cases were provided to the disciplinary Committee, they were in the form of findings from investigations by risk management or internal audit, which required disciplinary processes to be initiated.

Cost of the advisory committees appointed by the former minister

- Expenditure (remuneration) in respect of the Stabilisation and Disciplinary Advisory Committees was as follows:

Financial year	Stabilisation Committee	Disciplinary Advisory Committee
2019/2020	R3,677,000	-
2020/2021	R8,851,000	R3,140,000
2021/2022	R2,176,000	R3,840,000
Total:	R14,704,000	R6,980,000

- The Disciplinary Advisory Committee members were appointed by the former Minister on a part-time basis, for a maximum of 8 hours per day and 15 working days per month, paid on an hourly basis, based on monthly reports and time-sheets with descriptions of work done
- The contracts of the members of the Committee indicated that they were remunerated for advice, support, preparatory work, sitting fees, and subsequent reporting
- The Chairperson and Deputy Chairperson of the Disciplinary Advisory Committee were paid R1 191 per hour, and the other members of the Committee were paid R871 per hour

Cost of Ministerial advisory committees

Details (including all costs, not just remuneration)	2019/20 financial year	2020/21 financial year	2021/22 financial year	Total
	R'000	R'000	R'000	R'000
National Rapid Response Task Team	3 266	6 829	2 990	13 085
Water Advisory Committee	1 853	7 885	3 377	13 115
Stabilisation and efficient functioning of the water sector committee	4 861	8 851	2 176	15 888
Water Services Committee	-	9 187	5 295	14 482
Disciplinary Advisory Committee	-	3 140	3 840	6 980
Total	9 980	35 892	17 678	63 550

The R36 million referred to in the Daily Maverick articles appears to refer to the cost of all the advisory committees appointed by the former Minister for the 2020-2021 financial year, including the Water Advisory Committee, the Water Services Committee and National Rapid Response Task Team.

Termination of the Disciplinary Advisory Committee

- The term of the appointments of the Members of the Disciplinary Advisory Committee was linked to the previous Minister's term of office and the tenure of the Committee terminated in August 2021 when the previous Minister's term of office ended.
- Minister Mchunu decided not to renew the term of office of the Disciplinary Advisory Committee because:
 - It was expensive and the expenditure on the Disciplinary Advisory Committee was not commensurate with the value that it added:
 - The Disciplinary Advisory Committee was provided with information about disciplinary cases by the Department, and then provided the Minister and DG with support and advice regarding the information
 - However, the Department already provides the Minister and DG with support and advice
 - The disciplinary processes were being implemented by the Department anyway, in terms of the legal prescripts governing disciplinary processes in the public service.
 - The Department has a statutory independent audit committee and a statutory independent risk management committee, both of which are also remunerated, and the roles of the audit committee and risk management committee also include monitoring the implementation of disciplinary cases for financial misconduct.

Hand-over report

- Minister Mchunu received a hand-over report from the former Minister which included a summary of 41 disciplinary cases – this was a summary of the current disciplinary cases in August 2021 (41 of the 63 were in process at the time) which the Department provided to the former Minister to include in her hand-over report.
- Minister Mchunu requested a full report from the Disciplinary Advisory Committee but this was never provided to him.
- The acting DG of the Department also wrote to the former Chairperson of the Disciplinary Advisory Committee in August 2021 requesting her to submit a hand-over report in respect of work that had been done by the Disciplinary Advisory Committee, but no response or report was received.
- The DG of DWS again wrote to the former Chairperson of the Disciplinary Advisory Committee on 3 May 2022 requesting the report. Since no response was received, a letter of demand has now been sent to the former Chairperson of the Disciplinary Advisory Committee, requesting the report.

3. Status of the disciplinary cases referred to in the Daily Maverick articles

Status of the 63 cases at 30 April 2022

- Of the 41 disciplinary cases summarized in the hand-over report from the former Minister to Minister Mchunu in August 2021, 21 have since been finalised
- As at 30 April 2022, 20 of these cases were still being attended to and are in various stages of finalization
- Of the total of 63 cases: 43 cases have been concluded as follows:
 - 6 were not finalized because the employees either resigned or retired
 - 3 cases were withdrawn due to a lack of evidence or where the representations by employees were sufficient to not pursue disciplinary action
 - 1 employee was found not guilty
 - 33 cases have been found guilty through disciplinary processes and the sanctions implemented are:

SANCTION	NUMBER OF CASES
Counselling	5
Verbal Warning	2
Written warning	9
Final Written warning	5
Suspension without pay	8
Demotion	0
Dismissal	4

Application of public service disciplinary processes

- Discipline in the public services is regulated by the Disciplinary Code for salary levels 1-12 and Chapter 7 of the SMS handbook for senior managers.
- These regulatory frameworks prescribe the following approaches to the application of discipline in the Public Service:
 - The application of discipline must be applied progressively, i.e. corrective counselling, verbal warnings, written warnings, final written warnings, formal disciplinary action.
 - The relevant disciplinary process (formal or informal) will be dependent on the seriousness of the allegations.
 - Pre-disciplinary processes include an *audi alteram partem* process which offers the alleged offender the opportunity to provide a response to the allegations.
 - Based on the response, consideration is then given to concluding the disciplinary process.
 - The disciplinary process may result in a range of possible sanctions, ranging from warnings to dismissal.
 - In a formal enquiry, the disciplinary process is conducted by an independent presiding officer, wherein the alleged offender is afforded sufficient time to prepare for the enquiry, is able to be duly represented, and has the right to challenge the employer case and if found guilty, plead in mitigation of sentence on an appropriate sanction.
- DWS has been following the prescribed processes for all of these 63 cases

4. Disciplinary cases related to financial misconduct in DWS over the past 10 years

Financial misconduct disciplinary cases 2013 - 2022

- Total number of financial misconduct cases involving employees of the Department since 2013: 147
- Cases finalized at 30 April 2022: 118
- Cases still in process at 30 April 2022: 29
- 9 employees resigned during the disciplinary processes (included in the 118 finalized)
- 118 cases have been finalized: 2 cases not pursued due to lack of evidence; 1 found not guilty; 115 found guilty (with a range of types of sanctions)
- During this period, there were five different Ministers and seven different DGs or acting DGs
- The Department has also been cooperating fully with all the SIU investigations and has handed over all relevant information to the SIU

Processes followed with officials that left the employment of the Department

- When an official is transferred to another Department whilst there is still a pending disciplinary matter, the case is transferred to the New Department for them to conclude the disciplinary process.
- When an official has been disciplined and has been dismissed, the details of such a dismissal are captured on PERSAL. This alerts other Departments, should they wish to appoint such an official in future. It is an automatic block on the system and the Head of Department would have to make a decision on whether to appoint such an official.
- When an official resigns whilst there is still a pending disciplinary matter, there is no further action that can be taken on the disciplinary side. That official can be pursued through civil and criminal court.
- The department has referred matters to the SAPS where criminal investigations are required.

5. Status of disciplinary cases referred by Special Investigating Unit (SIU)

Sources: March 2022 presentation made by SIU to Minister and department; DWS disciplinary process records

Process of SIU investigations

- The SIU receives and/or follows up on allegations
- It assesses and verifies allegations and evidence
- Where necessary, it motivates for a proclamation to the President
- SIU powers become active once the proclamation is published
- Different types of actions based on SIU reports:
 - Civil litigation instituted in SIU's name
 - Evidence of criminality referred to National Prosecuting Authority and Asset Forfeiture Unit
 - Evidence of misconduct referred to the Accounting Officer
 - Evidence of any other transgressions referred to relevant authorities (Institute of Directors, IRBA, SARS, various regulatory bodies, Financial Intelligence Centre)

Collaboration between DWS and the SIU

DWS is collaborating with the SIU on an ongoing basis:

- Monthly meetings between SIU and department (DDG: Corporate Services, heads of internal audit, HR, Legal and Internal Audit and Risk Management units)
- SIU provides department with additional requests for information which are attended to promptly, sometimes immediately during the meeting
- Department provides SIU with progress reports on disciplinary processes

Completed SIU investigations into DWS and its entities

No.	Details of the Proclamation	Outcomes	Date Final Report submitted to the Presidency
1.	Proclamation No R35 of 2008: Allegations at the Mhlathuze Water Board	<ul style="list-style-type: none"> • Criminal Case referral to Law Enforcement (Officials Resigned) 	30 April 2013
2.	Proclamation No R54 of 2012: Various allegations at the Department of Water Affairs	<ul style="list-style-type: none"> • 58 different referrals • Criminal Case referral to Law Enforcement • Recovery of funds 	15 December 2016
3.	R54 of 2012 extension Department of Water Affairs: Vuwani Pipeline	<ul style="list-style-type: none"> • NPA referral • Disciplinary referral 	26 October 2018

R35 of 2008 - Allegations at the Mhlathuze Water Board

Project:

Inspection, Repair and Maintenance of underwater pipes

Allegation:

Procurement and background to the procurement of services by Mhlathuze Water for the inspection, repair and maintenance of underwater pipes conveying effluent from the Mondi Business Papers Plant into the sea, contrary to applicable legislation or internal prescripts, policy or regulations that regulate such procurement.

Outcome:

- A criminal case of fraud and corruption was opened against an employee of the Mhlathuze Water Board and the service provider who paid gratification. The case was reported at Richards Bay, CAS 164/11/2010 refers.
- A criminal case of contravention of section 50(1)(a) and section 51(1)(a)(i) read with section 86 of the Public Finance Management Act was opened against the board members of Mhlathuze Water Board. The case was reported at Richards Bay, CAS 227/03/2010 refers.
- The DPCI are handling these two criminal investigations.
- Three implicated employees of the Mhlathuze Water Board resigned prior to the completion of our investigation.

R54 of 2012 - Various allegations at the Department of Water Affairs

Project:

Various Allegations

Allegation:

The SIU conducted the investigation into approximately **34 allegations** all of which were completed with significant and successful outcomes.

Completion of the investigation:

- The investigations are completed and the Presidential Report on the out comes was presented to the Presidency on 15 December 2016.
- The SIU presented the Final Presidential Report to the President on the Vuwani Steel Pipeline on 28 October 2018.

Outcome:

- As a result of the investigation conducted by the SIU, 58 different referrals were made in respect of the outcomes of the investigations.
- 28 – Criminal Referrals
- 13 – VAT Referrals
- 17 – Disciplinary Referrals

R54 of 2012 - Various allegations at the Department of Water Affairs – disciplinary referrals (conflict of interest)

N o	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
1	Admin Clerk	Night Breeze Nosande Trading 99	7 November 2013	Mismanagement of state finances & violation of Code of conduct. Company benefited R125 400 from doing business with the state	Pursuant to an audi alteram process, aDG accepted that there was no mismanagement of state funds and the official had procedurally disclosed in 2010, her interest in the company. After pleading to aDG in mitigation, the charges were not pursued and the case was closed.
2	Admin Clerk	Chief Morris Business Enterprises	7 November 2013	Fraud c/PACOCA R678 756	Dismissed from the Department
3	Deputy Director: Regulation	Ntsakkonoe General Trading	7 November 2013	Failure to disclose interest in a company i.t.o SMS Handbook. Member in Company, that benefited R528 291 from doing business with the state	Pursuant to audi alteram process, aDG accepted that in 2010, the official was not an SMS member, therefore the rule was not applicable to her in 2010 and she provided proof of resignation in 2010 which was only processed by CIPC in 2015. aDG decided not to pursue the matter further.

R54 of 2012 – continued (2)

No	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
4	Admin Clerk	Tsa Lefatse Consulting	7 November 2013	Fraud c/PACOCA R349 541	Resigned from the Department on 31 December 2015 before finalisation of the matter.
5	Admin Clerk	Buhle Graphix CC	7 November 2013	Fraud c/PACOCA R151 807	Resigned from the Department on 30 April 2016.
6	Admin Clerk	Lunga Thandiwe and Thandeka Construction and Project	7 November 2013	Fraud c/PACOCA R117 700	On 21 December 2021 , the official was given a final written warning after making representation to the department as to why formal disciplinary action should be instituted against her.

R54 of 2012 - continued (3)

No	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
7	Admin Clerk	Makhekhekhe Developments	7 November 2018	Fraud c/PACOCA R49 987	Official found guilty and sanctioned with a Final Written Warning and 3 months suspension without pay.
8	Admin Clerk	Appetite Vision Caterers	7 November 2018	Fraud c/PACOCA R38 460	Official resigned on 31 July 2017
9	Admin Clerk	RAB Building Services	7 November 2018	Conflict of interest, as official was a Director of a company that benefited R37 369 from doing business with the State.	Pursuant to a further investigation by DWS it was discovered that the official was a handyman employed by RAB Building Services and not a Director prior to joining DWS. RAB fraudulently acquired his signature, for (BEE purposes) to secure State work. aDG therefore elected not to pursue the charges against him.

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R54 of 2012 - continued (4)

No	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
10	Senior Admin Clerk	Botsi trading and Ndimeni Training and Development	17 October 2014	c/PACOCA Dishonesty/ fraud c/217 of the Constitution F&W exp R468 400	Official resigned from the Department on 12 October 2016. The SIU traced the official and disciplinary was referred to the HOD at DSD where the employee was employed.
11	Project Manager	Appointment of 86 contract workers: Expanded PW Programme	17 October 2014	Fraud c/PACOCA R283 749 + R70 000 gratification	Not an official of the DWS, currently working within Environmental Affairs. The SIU traced the official and disciplinary was referred to the HOD at Environmental Affairs.

R54 of 2012 - continued (5)

No	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
12	Senior Accounting Clerk	Payments made to TWM Projects	9 December 2013	Dishonesty/fraud/financial misconduct F&W exp R1 647 603	The official was given a final written warning after making representation to the department as to why formal disciplinary action should be instituted against her.
13	Chief Accounting Clerk	Payments made to TWM Projects	9 December 2013	Dishonesty/fraud/ financial misconduct F&W exp R1 647 603	The official was given a final written warning after making representation to the department as to why formal disciplinary action should be instituted against her

R54 of 2012 – continued 6

No	Official Rank	Employee owned business entity	Date SIU referred disciplinary referral to the Department	Charges and Value	Status of disciplinary action
14	Admin Officer	Payments made to TWM Projects	9 December 2013	Dishonesty/ fraud/financial misconduct F&W exp R1 647 603	Finalised. Issued with a final written warning.
15	Admin Officer	Payments made to TWM Projects	9 December 2013	Dishonesty/ fraud/ financial misconduct F&W exp R1 647 603	Official submitted representations to the Department. Official not charged and based on a lack of evidence the Department did not pursue the matter and the matter was closed

Note: Botsi trading and Ndimeni Training and Development belongs to one individual who has three referrals hence the total number is 15 whereas referrals are 17.

R54 of 2012 extension - Department of Water Affairs: Vuwani Pipeline

Project:

Vuwani Pipeline

SIU observations:

- There was no water going through the pipeline and the communities are still not getting the benefit;
- The 3km part of the pipeline that was damaged had not been repaired;
- There are parts of the lining inside the pipe that are loose and must be repaired;
- This confirmed, by the project managers, BigenAfrica;and
- The Department doesn't have funds to pay the Ascul or Bigen.

R54 of 2012 - Department of Water Affairs: Vuwani Pipeline (continued)

Outcomes:

- NPA referral of evidence pointing towards fraud involving the company, Ascul Construction and the Director on 18 September 2018.
- Disciplinary referral of evidence pointing towards possible misconduct of DDG at the Water Trading Entity, at the Department on 30 July 2018. The disciplinary hearing was finalised and the official was found not guilty. The DWS has filed a review application at the Labour Court.
- The misconduct involved: Gross negligence in the performance of her duties, contravening various prescripts including the PFMA, Constitution, Treasury Regulations, the Department's SCM Policy and the CIDB Act.
- 3 SARS referrals against Ascul Construction and the two DWS officials for tax discrepancies and unexplained income. SARS pursuing the matters as per letter received from SARS on 17 July 2019.
- Referred evidence to the Construction and Industry Development Board in February 2018 pointing towards fraud committed by the company in the grading process. Follow up letter received by CIDB on 17 July 2019 confirming that the CIDB is conducting their inquiry.

In-progress SIU investigations into DWS and its entities

No.	Proclamation
1.	Proclamation R22 of 2016 Lepelle Northern Water: Contract awarded to LTE Consulting (Pty) Ltd
2.	Proclamation R27 of 2019 Lepelle Northern Water: Contract awarded to Blackhead
3.	Proclamation R27 of 2018 Contracts awarded by DWS to SAP
4.	Proclamation No R28 of 2019 Thukela Goedertrouw Water Scheme
5.	Proclamation R4 of 2019 Umgeni Water
6.	Proclamation R33 of 2021 4 contracts awarded to EOH

Note: The SIU refers evidence pointing towards misconduct or criminal conduct as soon as there is sufficient evidence in order to allow the AO or LEA to take immediate action. The SIU does not wait to do this in the final report.

Proclamation R22 of 2016 Lepelle Northern Water: Contract awarded to LTE Consulting (Pty) Ltd

Project:

Mopani Water and Waste Water Emergency Intervention

Allegation:

No procurement processes were followed

Outcomes:

- The SIU issued summons on 26 November 2018 in the High Court, Limpopo Division, Polokwane, case number 7209/18.
- The civil litigation action is to set aside the contract to the value of R4.1billion.
- The contract was unlawfully and irregularly concluded.
- The parties to the litigation are: SIU v LNW, LTE Consulting(Pty) Ltd, Khato Civils (Pty) Ltd, South Zambezi Engineering (Pty) Ltd, Mopane District Municipality, Department of Water and Sanitation.

Proclamation R22 of 2016 Lepelle Northern Water: Contract awarded to LTE Consulting (Pty) Ltd

Referrals:

- The SIU has referred evidence to the Construction and Industry Development Board pointing toward a contravention of the CIDB Act on 6 December 2017. The current status of the matter is that the CIDB is conducting an investigation into the matter based on the SIU's recommendation.
- Disciplinary referral was made in respect of the LNW CEO who later resigned before the disciplinary hearing was held. The disciplinary referral was referred on 26 February 2018 for negligence and contravening the PFMA.
- NPA referral was made on 3 April 2018 for former CEO for contravening the PFMA. NPA referral was made in respect of the official on 20 September 2018 for collusion, and fraud, in particular forgery.
- The disciplinary referral against the Manager: Planning GIS at LNW was referred on 20 September 2018 for collusion, fraud and forgery. The manager was charged with misconduct by LNW and the disciplinary hearing began in March 2022.
- The investigation has been concluded and the SIU team is finalising the final report to be submitted to the Presidency.

Proclamation R27 of 2019 Lepelle Northern Water: Contract awarded to Blackhead

Project:

The raising of the Tzaneen dam wall project.

Allegation:

Corruption

Preliminary Findings:

- Preliminary findings shows that there was no fair and competitive process followed when awarding the project to Blackhead Consulting.
- The contract was initially awarded to LTE Consulting (Pty) Ltd and later to Blackhead Consulting.
- There is a relationship between the directors of the two companies.
- There was no need to appoint on an urgent basis as the project was part of the Departments planning approved in 2012.

Outcome

- The investigation is still ongoing

Proclamation R27 of 2018 Contracts awarded by DWS to SAP

Project:

SAP Licences

Allegations:

- Purchasing of SAP Licences for more than R500 million, for which it is alleged that it was not necessary, without correct tender process, and resulted in the payment of R35 million in kickbacks.

Outcomes:

- On 15 March 2022 the Special Tribunal ordered that the 2015 and 2016 contracts valued at R1 036 000 000 are declared constitutionally invalid and set aside.
- The court further ordered that SAP repay an amount of R413 121 283.40 (which represents the total amount received pursuant to the 2015 and 2016 contracts)
 - Less a set-off amount of R68 337 036 owing to SAP for yearly maintenance fees in terms of the 2012 agreement
 - The disputed amount of approximately R83 million for 3rd party costs incurred by SAP and the no profit principle will be adjudicated on by the Special Tribunal and a further order made as to the repayment of a further amount of R83m to DWS.
- Savings in the amount of R691 million were incurred for the DWS – R263 million was repaid to DWS in March 2022

Proclamation No R28 of 2019 Thukela Goedertrouw Water Scheme

Project:

- Emergency upgrading of the Thukela Goedertrouw Transfer Scheme

Allegation:

Unlawful or improper conduct by officials or employees of the Department.

Outcomes (initial findings):

- The appointed service provider for the upgrade was not on a panel of professional service providers for the Department
- The service provider was appointed on the pretence of an emergency which was not justifiable
- The appointed service provider was paid an amount of R419 963 588.30 excluding VAT whilst the upgrade was not completed after the contract period expired in March 2019.

Umgeni Water Proclamation R4 of 2019 (1)

Projects:

- Contract Participation Goal Programme of Umgeni;
- Provisioning or upgrading of emergency boreholes in the Umkhanyakude District
- Repair or refurbishment of the Nagle Aqueduct;
- Replacement of filter slabs, pipelines and nozzles in terms of the Contract Participation Goal Programme of Umgeni;
- Provisioning or upgrading of chlorine distribution equipment, the distribution of chlorine and the upgrading of shat pumps and lifts at the Durban Heights Plant;
- Provisioning of emergency pipelines in the area of the Ugu District Municipality;
- Purchase and installation of control valves in terms of the Contract Participation Goal Programme of Umgeni, and
- Installation of Nungwane pipelines in the area of Amanzimtoti

Allegations:

Maladministration and Corruption

UMGENI WATER Proclamation R4 of 2019 (continued)

Outcomes:

- Referral made to the National Prosecuting Authority for Fraud, Corruption and Money Laundering against 57 individuals and entities.
- Referrals made to the AFU in respect of 45 individuals and entities to recover the proceeds of Crime
- Potential outcomes:
 - 5 disciplinary referrals to Umgeni Water (Umgeni Water has finalised disciplinary processes for these referrals which related to exceeding delegations, and this resulted in warning letters being issued to the officials)
 - 45 Administrative Action for placing the entities and individuals on the National Treasury database of restricted suppliers
- Progress reported:
 - The Investigation is complete and the SIU is in the final reporting phase.
 - All the matters referred to NPA have been actioned and dockets have been opened. The criminal matters are with Head Office DPCI in the Serious Corruption Offences component.
 - The final Presidential report is drafted and is in the final review process at the SIU.

Proclamation R33 of 2021: Four contracts awarded to EOH

Contract:

- WP 0538
- 1/2/4/233/2014/15 Finance/Manahano
- 1/2/4/241/2015/2016 Information Technology/Mihloti
- 1/2/4/36/2016/17 Supply Chain Management/Mihloti

Allegations:

- The contracts were awarded irregularly
- The value of the contracts were inflated and unnecessarily varied and included additional scope of works
- EOH paid large sums of money to subcontractors who allegedly did not perform any work on the contracts. The sub-contractors were disguised as Enterprise Development (“ED”) partners.
- There were unusual and irregular upfront payments made on the contracts. While upfront payments are provided for in Treasury Regulations, contractually this was not the case.
- The need for some services were fabricated.
- Invoicing was made long after the projects had ended.

Outcome:

The investigation is still underway

New Allegations to the SIU

No.	Institution	Allegation	Status
1.	Lepelle Northern Water Board	<p>It is alleged that the LNWB procured:</p> <ul style="list-style-type: none"> (a) Drought relief technology services; and (b) Investigation services from service providers in a manner that was contrary to the provisions of section 217(1) of the Constitution as well as the LNWB's procurement prescripts. <p>It is further alleged that:</p> <ul style="list-style-type: none"> (a) One of the service providers was appointed on an expedited basis without just cause; and (b) The procurement (in respect of both matters) was not budgeted for. 	The SIU has assessed the allegations and has applied to the President for a proclamation to investigate these matters.

New Allegations (2)

No.	Institution	Allegation	Status
2.	Amatola Water Board	<p>It is alleged that the AWB procured:</p> <ul style="list-style-type: none"> (a) Drought relief technology services; and (b) Investigation services from the same service providers appointed by the LNWB in a manner that was contrary to the provisions of section 217(1) of the Constitution as well as the AWB's procurement prescripts. <p>It is further alleged that:</p> <ul style="list-style-type: none"> (a) Of the R230million allocated to the AWB for drought relief solutions, 60% was earmarked for the drought relief technology service provider; (b) The procurement of both services was not budgeted for. 	<p>The SIU has assessed the allegations and has applied to the President for a proclamation to investigate these matters.</p>

New Allegations (3)

No.	Institution	Allegation	Status
3.	Department of Water and Sanitation	<p>The SIU is aware of various allegations and concerns voiced in the media and elsewhere regarding:</p> <ul style="list-style-type: none"> • The War on Leaks Program, • Drop a Block, • Sedibeng Water Board. <p>The SIU has requested and reviewed reports from the AGSA, OUTA, Parliament and the DWS in order to thoroughly assess the matter and the allegations around the billions of rands of irregular and unauthorized expenditure.</p>	The SIU has assessed the allegations and has applied to the President for a proclamation to investigate these matters.

SIU Civil Recoveries

Proclamation	Amount	Status
Proclamation No R54 of 2012: Mr Senokwane matter	R2 843 699.00	<ul style="list-style-type: none"> The accused was sentenced to seven years imprisonment. There was no actual recovery as his business was liquidated and he was in jail.
Proclamation No R54 of 2012: Sundays River Valley Municipality	R5 804 800.00	The SIU continued to monitor the monthly instalments of these monies and successfully recovered the R5 804 800 for the DWS.
Proclamation R27 of 2018 Contracts awarded by DWS to SAP	R263 000 000.00	<ul style="list-style-type: none"> On 15 March 2022 the Special Tribunal ordered that the 2015 and 2016 contracts valued at R1 036 000 000 be declared constitutionally invalid and set aside. The court further ordered that SAP repay the amount of R413 121 283.40 (which represents the total amount received pursuant to the 2015 and 2016 contracts) <ul style="list-style-type: none"> Less a set off amount of R68 337 036.00 owing to SAP for yearly maintenance fees in terms of the 2012 agreement) The disputed amount of approximately R83 million for 3rd party costs incurred by SAP and the no profit principle will be adjudicated

SIU Civil Recoveries - continued

Proclamation	Amount	Status
R54 of 2012 Department of Water Affairs: Vuwani Pipeline	R95 631 945.35	<p>The summons was issued on 6 February 2018 in the name of the SIU as the plaintiff against out of the High Court of South Africa, Gauteng Division, Pretoria, Case No 7760/18.</p> <ul style="list-style-type: none"> • Following an exception raised by one of the Defendants, amended Particulars of Claim were filed on 24 July 2018. The Defendants responded to this with amended Pleas, which were filed during November 2018. • To refute the defences raised, which were of a highly technical nature, an engineer was procured to perform an additional investigations and to revise the quantification of the damage suffered. This process resulted in a delay. The engineer has since provided his preliminary report. <p>Following the engineer's report and the appointment of a judge in respect of the case management process, the SIU has filed a Notice to further amend its Particulars of Claim. Third Defendant's attorneys has since withdrawn from record. The above has resulted in delays which have been exacerbated by the effect on the court's procedures caused by the advent of the Covid-19 pandemic.</p>

6. Status of cases referred to SAPS by the Department for criminal investigations

**Source: engagements between DWS and SAPS
in March 2022**

Status of current cases investigated by the SAPS & the Hawks (1)

No	Law enforcement Agency	Details of the Investigation	Saps case number	Status of the case
1	SAPS	Investigation into the fraudulent payments that were processed by the Accounts Payable Officer.	PRETORIA CAS 96/12/2015	06/12/2019 – case closed as SAPS was unable to locate the suspect.
2	SAPS	Investigation conducted into the procurement irregularities and fraud at Tugela Vaal Area Office.	BERGVILLE CAS 77/10/2016	Still under investigation
3	SAPS	Investigation into the payment that was paid into an incorrect bank account.	PRETORIA CAS 460/3/2016	Closed as withdrawn by Prosecutor. Funds were recovered from FNB following a Judgement against them.
4	SAPS	Investigation into the advance payment that was illegally paid irregularly to a supplier.	TZANEEN CAS 73/12/2016	Closed as prosecutor has withdrawn the charges.
5	SAPS	Investigation into the inflation of invoices by the supplier.	MAKHADO CAS 97/12/2016	15 February 2022- Suspect was arrested and he appeared before the Giyani Magistrate court. The case was postponed for plea and trial but the suspect passed away before the trial could resume.

Status of current cases investigated by the SAPS & the Hawks (2)

No	Law enforcement Agency	Details of the Investigation	Saps case number	Status of the case
6	SAPS	Investigation into procurement irregularities regarding the civil contract. Corruption suspected.	MMABATHO CAS 174/06/2016	Closed – detectives could not find evidence to substantiate the allegation.
7	SAPS	Investigation conducted into the allegations of conflict of interest at Construction West. Officials procuring goods from companies that are owned by their spouses.	POTCHEFSTROOM CAS 455/10/2016	Case withdrawn by the Senior Prosecutor and docket has been closed.
8	SAPS	Investigation into the irregular payment that was made to the Local Municipality. Corruption suspected to divert funds away from the project.	CAS 296/10/2016	Docket closed due to lack of evidence
9	SAPS	Investigation into the fraudulent payments that were processed at the Gauteng Regional Office.	PRETORIA CAS 459/3/2016	Case withdrawn by Prosecutor
10	SAPS	Investigation into the fraudulent purchase requisitions and purchase orders that were created at Construction North.	TZANEEN CAS 209/3/2017	Case closed as it was Nolle prosequi based on the following reason: There is no proof of intention nor misrepresentation. The service provider insists that it was a mistake on their part and not intentional. An amount of R622 463.94 was recovered from them.

Status of current cases investigated by the SAPS & the Hawks (3)

No	Law enforcement Agency	Details of the Investigation	Saps case number	Status of the case
11	Directorate for Priority Crime Investigation (The Hawks)	Investigation into alleged corruption and irregular awarding of security tenders at Limpopo Regional Office.	POLOKWANE CAS 716/7/2017	Still under investigation.
12	SAPS	Investigation into the alleged theft of assets at Brits.	BRITS CAS 162/11/2017	Case closed due to lack of evidence.
13	SAPS	Investigation into the alleged fraudulent letters that were issued to the water users at Breede-Gouritz water management area notifying them of the change of bank account.	GEORGE CAS 4/11/2017	Case closed due to lack of evidence.
14	SAPS	Investigation into the procurement irregularities at Construction North (Tzaneen)	TZANEEN CAS 179/11/2017	Case closed due to lack of evidence.
15	Directorate for Priority Crime Investigation	Investigation into the alleged irregular appointment of a Financial Advisory Services (3/6/3/2/1/1819/01)	PRETORIA CAS 704/7/2018	Investigation is still in progress. Prosecutor requested further information.

Status of current cases investigated by the SAPS & the Hawks (4)

No	Law enforcement Agency	Details of the Investigation	Saps case number	Status of the case
16	SAPS	Investigation into the alleged procurement irregularities.	PRETORIA CAS 378/09/2018	The case has been closed on the basis of the Prosecutors Nolle Prosequi (declined to prosecute)
17	SAPS	Investigation into the alleged theft and misconduct by an Artisan Foreman and the Supplier at Tugela Vaal.	BERGVILLE CAS 137/5/2019	Investigation is still in progress
18	SAPS	Investigation into the theft of the revenue that was collected at Vanderkloof Dam.	VANDERKLOOF CAS 8/6/2019	Closed as charges withdrawn by prosecutor
19	SAPS	Investigation into the suspected fraudulent roadworthy certificates that were issued for state vehicles.	THOHOYANDOU CAS 654/8/2019	25/11/2021 – Case has been referred to the Senior Public Prosecutor for a decision
20	SAPS	Investigation that was conducted into the alleged submission of fraudulent Refund Claims.	STANDERTON CAS 213/02/2020	A docket was sent to the Prosecutor for further instructions on 31 January 2022

Status of current cases investigated by the SAPS & the Hawks (5)

No	Law enforcement Agency	Details of the Investigation	Saps case number	Status of the case
21	SAPS	Investigation that was conducted into allegations of fraud and corruption at Construction East.	CAS 04/03/2020	Case has been withdrawn by the Senior Prosecutor
22	SAPS	Investigation into allegations of fraudulent claims	SAPS Durban Central CAS 1105/10/2021	Criminal case was reported on 27 October 2021. Investigation is in progress

Note: The department was not satisfied with the closure of cases without valid reasons and/or engagement with the departmental forensic team. The department wrote to the National Police Commissioner to register their dissatisfaction with the closures and he acknowledged the status and promised to engage the Provincial Commissioners. The department is still waiting for feedback however; it is in a process of following up with the newly appointed National Commissioner.

7. Status of forensic investigations by the Department's internal audit unit

Progress on forensic cases 2019/2020 to 2021/22

- 123 Forensic Investigation cases were investigated by the Department's Internal Audit Unit during the period 2019/20 to 2021/22.
- 88 of the allegations were confirmed to be true while 35 were unfounded.
- 20 cases are currently under investigation.
- 18 cases have not been investigated yet. Investigations will commence soon.
- The finalised cases were referred to:
 - Employee Relations to take disciplinary action against the officials who committed financial and other acts of misconduct;
 - SAPS and the Hawks for criminal investigation; and
 - Legal Services for Civil Recovery in instances where the Department has suffered financial loss.
- These cases resulted in sanctions against the transgressors. These sanctions included: Dismissal, Demotion, Suspension without pay, Written Warning letters.
- These cases resulted in an amount of R996 883.24 being recovered through Civil Recovery processes and a judgement of R27 510 067.17 in favour of the Department.
- Internal Audit conducted 65 awareness sessions during the period 2019/20 to 2021/22 wherein 1 561 officials were trained about anti-fraud and corruption measures.

Outcomes of disciplinary action emanating from forensic investigations 2013-2022

The outcomes of forensic investigations following disciplinary action are as follows:

Details	Senior Management Service Members	Salary Levels 1-12	Total
Officials Found Guilty	9	100	109
Officials Not Found Guilty	3	23	26
Resignations	10	15	25
Reinstatement- an Arbitration Award	0	8	8
Total	22	146	168

The sanctions implemented are as follows:

Details	Senior Management Service Members	Salary Levels 1-12	Total
Dismissals	0	9	9
Demotions	0	1	1
Verbal Warning	1	4	5
Warning letter	3	15	18
Final Written Warning letter	2	38	40
1 month suspension	0	9	9
2 months suspension	1	7	8
3 months suspension	2	14	16
15 days suspension	2	1	3
Total	11	98	109

8. Impact of fraud and corruption on water and sanitation service delivery

Impact of fraud and corruption on water and sanitation service delivery (1)

- **Social and health impacts**
 - The impact of fraud and corruption in the water sector can be measured in various ways including dry taps, lost jobs and polluted rivers; many people, particularly young children, old people, and those with compromised immune systems, have become ill from drinking unsafe water or their homes, loss of life, and toilets cannot be kept hygienic.
- **Socio-economic impacts**
 - There is also a reduction in the quantity of public resources available for redistribution purposes
 - Use of fraudulent or lower-grade inputs in infrastructure projects or essential supplies to increase profit margin at the expense of intended beneficiaries
 - Bribery and extortion at the point of delivery can render public services unaffordable for a large segment of the population, effectively depriving the poor of access to key basic services
- Impacts are most notable in poor communities where service provision is already at its weakest. Where funds are scarce, any fraud / corruption that diverts money from public purposes to private individuals / institutions directly reduces the provision and quality of services
- In particular, where service delivery needs are great and resources are scarce, fraud and corruption diverts funds that could have provided services to under-served communities.

Impact of fraud and corruption on water and sanitation service delivery (2)

- The impact on the Department and the water sector includes amongst others:
 - Unreliable water and sanitation services
 - Poor water quality due to non-treatment of water and wastewater plants
 - Inability to raise low-cost debt finance for investment in infrastructure
 - Inadequate investments in infrastructure which will have an adverse impact in meeting the current and future increased demand for water services
 - Negative country outlook through credit rating agencies
 - Contractual disputes leading to litigation and interruption of projects in communities.
- Projects take long to complete, resulting in unsustainable cost structures, commitments made without confirmed funding, intended purposes were not met, with direct and indirect impacts on service delivery.

9. Summary and Conclusions

It is untrue that the Department has not been pursuing the disciplinary cases referred to in the Daily Maverick articles

The articles in the Daily Maverick are an inaccurate description of the roles and responsibilities of the Disciplinary Advisory Committee appointed by the former Minister, where it obtained its information from, and what has occurred with investigations since the term of the Disciplinary Advisory Committee came to an end with the term of the former Minister. In fact:

- The Disciplinary Advisory Committee had no legal authority to act as a disciplinary committee in terms of public services prescripts regulating disciplinary action
- The Disciplinary Advisory Committee obtained its initial information on the “roughly 65” (in fact 63) cases referred to in the articles from the Department
- The Department has continued to pursue all the disciplinary processes related to all the cases which were referred to the Disciplinary Advisory Committee.

Summary of progress with disciplinary processes referred to in the Daily Maverick articles

- The Department had finalized 22 of the 63 cases by the time that Minister Mchunu became Minister
- Of the 41 remaining cases summarized in the hand-over report from the former Minister to Minister Mchunu in August 2021, 21 have since been finalised
- As at 30 April 2022, the remaining 20 cases were still being attended to and are in various stages of finalization
- Of the total of 63 cases, 43 cases have been concluded as follows:
 - 6 were not finalized because the employees either resigned or retired
 - 3 cases were withdrawn due to a lack of evidence or where the representations by employees were sufficient to not pursue disciplinary action
 - 1 employee was found not guilty
 - 33 cases have been found guilty through disciplinary processes
 - Sanctions: counselling: 5; verbal warning: 2; written warning: 9; final written warning: 5; suspension without pay: 8; dismissal: 4
- In total, R270 million has been recovered, and an additional R622 million has been saved by the Department since 2014 as a result of civil, legal and criminal actions resulting from cases of corruption and financial misconduct

The Minister and Director General of the department are committed to fighting corruption and ensuring consequence management for financial misconduct.

- The Minister and Director General of DWS are dedicated to uprooting fraud and corruption in the department and are committed to ensuring proper consequence management for all cases of fraud and corruption.
- Where the Department is of the view that a Presiding Officer has pronounced a sanction which is too lenient, the Department is taking the sanction on review.
- The Minister and Department request anyone with any additional information on alleged fraud, corruption or mismanagement in DWS to provide the Department and/or SIU with such information as soon as possible.
- The Department has initiated a review of all past financial misconduct disciplinary processes which were closed without initiating disciplinary action. Where it is found that the cases were closed when they should have been pursued, they will be reopened.

Thank you

