

AG Bulletin 16: Interview with Mr Alf Lees MP

A background quote from PMG:

Mr Kimi Makwetu, the Auditor General (AG) told the Standing Committee on Public Accounts (SCOPA) on 23 October 2019 that there were several root causes for the lack of improvement in government audit outcomes:¹

- There was a lack of urgency in responding to AGSA messages about addressing risks and improving internal controls. At fault were accounting officers and senior management -- political leaders and oversight bodies such as public accounts and portfolio committees.
- There were inadequate consequences for officials who deliberately or negligently ignored their duties. If they were not held accountable, such behaviour could be seen as acceptable and tolerated....

Mr Alf Lees (Democratic Alliance) said irregular spending was on the increase... Accounting officers were slow in obtaining condonation. There appeared to be no consequences for failing to deal with old irregular expenditure issues.

Mr Makwetu responded that irregular expenditure was growing because of a lack of consequences for those responsible.

The expenditure would be flagged by AGSA, there would be engagement with SCOPA, a report would be tabled, resolutions would be adopted -- and the next year there would be even greater irregular expenditure.

“How loud can these voices be? Can they be even louder?” he asked.²

Summary

We did not learn anything new from our interview with Alf Lees.

This was quite the most depressing interview we have conducted.³

Alf does not see any effectiveness in our Parliament or in our institutions (from the AG to the National Prosecuting Authority).

Parliament has voted in as committee chairs Members who are more than tainted with corruption themselves – such as Mr Mosebenzi Zwane⁴ and Advocate Bongani Bongo⁵.

¹ From PMG meeting report Public Accounts (SCOPA): Audit Outcome 2018/19: briefing by Auditor General, 23 October 2019. Available at < <https://pmg.org.za/committee-meeting/29139/> >

² Ibid – quote from PMG report.

³ With the exception of the Martin’s interview with Dr Tracy Ledger, on financial rot and corruption in our municipalities which was too depressing to write up in detail! See the note in AG Bulletin 18.

Others are Zuma-ites who were previously incompetent ministers – such as Ms Faith Muthambi⁶ and Ms Tina Joemat-Petterssen⁷. ANC committee chairs are never going to hold the executive to account. Even the one non-ANC chair, Mr Hlengwa of SCOPA, does not respond to letters sent to him by Mr Lees, and is reluctant to lead effective action. A sound and competent Parliamentary official, like Adv Frank Jenkins, is hesitant to identify actions of the executive as illegal – even when they are blatantly so. And AGSA itself is over-cautious and hesitant and lacks political will to call people to account.

The members of our Parliament come from a wide range of backgrounds. Induction of Members is efficiently handled by Parliament, but it is narrow – focusing on the institution, housekeeping procedures, basic rules etc. There is no focus at all on ethics and what ethical behaviour should mean to MPs. We are a long way from the parliamentary tradition in other countries, when members (and ministers) resign automatically when there is even a hint they may be implicated in a scandal. Few Members prepare thoroughly for committee meetings. Few know how to read balance sheets and the complex financial reports that flood into Parliament. Members may ask some minor question in a meeting – based on scanning a report rather than reading it in depth – and they think their work is done. [The poor preparation of all but a few Members was noted in interviews with the AGs office – but, on the other side, presenters to committees often delay in submitting their presentations, so the first sight Members have of the content is at the meeting itself. There is also the bizarre situation that long formal reports are further lengthened by sometimes 50 or 70 presentation slides that repeat information already submitted!]

Few Members end up being prepared to operate as the conscientious overseers and scrutineers of the executive that are envisaged by our Constitution.

“Consequence management” is a phrase Mr Lees has heard regularly since he was elected to Parliament in 2009. [This was defined by the AG in Parliament as “Action against transgressors (consequence management)”⁸] But Parliament has not held any people to account. Parliament underfunds the institutions, such as the National Prosecuting Authority, and they have inadequate resources to do the work [of following up with action against those officials and politicians who transgress legislation.] Parliament will take R21-billion to give

⁴ “Zwane, the ex-mineral resources minister, was, at the start of August, named in a civil summons by the Special Investigating Unit (SIU) and Eskom to recover R3.8-billion related to what Eskom described as “concerted efforts” to divert its resources to the benefit of the Gupta family in the acquisition of Optimum coal mine” <https://www.dailymaverick.co.za/article/2020-09-02-mps-forced-to-step-aside-enter-uncharted-legal-territory/>; <https://www.businesslive.co.za/bd/national/2020-09-27-news-analysis-mosebenzi-zwane-puts-his-unfitness-for-public-office-on-display-at-zondo-commission/>

⁵ “Bongo is charged with corruption, and has appeared in court several times since his arrest in November 2019. After a court appearance earlier in August, the matter is due back in court on 27 November.”

<https://www.dailymaverick.co.za/article/2020-09-02-mps-forced-to-step-aside-enter-uncharted-legal-territory/>; ALSO <https://www.dailymaverick.co.za/opinionista/2019-12-09-anc-nec-must-send-a-clear-message-by-getting-tough-on-bongani-bongo/>

⁶ “Parliament’s final report on its SABC inquiry, adopted in May 2017, found that Faith Muthambi as communications minister had politically interfered in the public broadcaster and “displayed incompetence”.” <https://www.dailymaverick.co.za/article/2018-07-13-the-case-against-faith-muthambi-zumas-faithful-soldier-and-guided-missile/>

⁷ Joemat-Pettersson’s conduct with regard to the debacle around the illegal sale of South Africa’s strategic oil reserves were labelled “reckless and delinquent” in court. <https://www.dailymaverick.co.za/article/2020-09-16-strategic-fuel-fund-agrees-to-draft-out-of-court-settlement-in-r5bn-botched-sale-of-countrys-oil-reserves/>

⁸ PMG report on a presentation to the Portfolio Committee on Human Settlements on the Audit of Predetermined Objectives of the Department 26-Mar-2013 Available at < <https://pmg.org.za/committee-meeting/15631/> >. The AG continued to use the phrase in presentations to other committees through 2013.

to SAA, but it does not fund the agencies [tasked with promoting democratic and accountable governance] which are hog-tied⁹. Parliament does not have the will to do it.

There is no point at all in tightening rules for Parliament or adding accountability legislation. A rules-based system expects that “good people” will get elected to Parliament. Rules only work if you have honourable people who follow them - but few are left!

Notes from the interview

The Auditor-General and all the rules are useless because they are not applied. Alf mentioned two examples:

- The AG has balked at using the new power he has been given by Parliament – especially at municipal level. Alf said he noted “a lack of robustness” in the AG’s conduct. He does a good job [exposing what lies behind weaknesses in audit outcomes and detailing material inconsistencies], but then he walks away! There is malfeasance and maladministration but no political will to hold people accountable. The AG has told Parliament he is phasing in his new powers gradually – why? [The powers are there and should be wielded immediately and fully.]
- At Beit Bridge on the Zimbabwe border, malfeasance is clear [in the irregularities surrounding 40km fencing project. The contract was overpriced by R14.3 million and because of non-compliance with aspects of the design specification and poor construction practices, the fence was found not fit for purpose. “Current payments in this regard may already be regarded as fruitless and wasteful expenditure”.¹⁰ The Special Investigating Unit (SIU) and the AG are both investigating the issue. Parliament’s SCOPA and Public Works committees heard the previous week – on 25 August 2020 - that “the investigation revealed procurement irregularities perpetrated during the infrastructure delivery process, as well as possible acts of fraud.”¹¹ The National Treasury had established that Minister Patricia van de Lille had interfered (improperly) in administrative issues with regard to the contract] – but, Alf said, disciplinary action is taken only against the Director General, not the Minister!

State agencies can head us away from state capture – but you have to fund them properly.

Moira intervened to ask whether Alf had any confidence that the expanded mandate given to the AG by the 2019 amendment will work. Will it be sufficient? And has state capture made its way into the AG’s office?

Alf expressed doubt and skepticism. The AG has now had [almost] two years but he has not once made an example of anyone. He should pick a case, and make an example. The AG, he regretted, has no political will to fulfil his mandate.

Moira asked if Alf saw a need then for stronger legislation – which is one of the recommendations being considered by the Checks and Balances project.

⁹ hog-tie: verb [with object] North American - secure (a person or animal) by fastening the hands and feet or all four feet together: *they gagged him and hog-tied him to the front pew.*

• impede or hinder greatly: *the flood of regulations that are hog-tying our businesses.*

¹⁰ <https://pmg.org.za/committee-meeting/30925/>

¹¹ <https://pmg.org.za/committee-meeting/30925/>

Alf said that legislation in itself won't result in change unless there is concerted application of it.

Alf said he was very much opposed to the new trend [using covid as the pretext] to hold more joint committee meetings. The aim is to reduce time needs, but less time is the biggest inhibitor [for pursuing accountability]. [SJR??? Joint meetings?] are abused by committee chairs.

Hlengwa [the chair of SCOPA] is desperate to show he is following Woods.¹² He says the right things, but he doesn't reply to any letters! [Sent to him by Alf regarding follow-up steps.] He does not like confrontation. Alf mentioned interventions he had made at a SCOPA meeting on 15 May 2020 dealing with SAA¹³ – which he described as his 'pet project'. The Business Rescue Practitioners had not been able to give satisfactory replies to many questions. The Chair had requested "a timeline and date for when the matter would be concluded" within seven days. But three months later there was nothing in the way of a reply!

If the chair of SCOPA, who is from a different party, is such a blockage in the work of the Committee, how much more are the ANC members?

[Yunus Carrim – disbanded the Scorpions]¹⁴

Chairs are extremely powerful and influential in committees and they inhibit the kind of oversight needed [by AG reports]. Many Zuma-ites are committee chairs.

Rules of Parliament are not, in themselves, inhibiting, it is how the rules are applied. Questions go unanswered for months. Nkosazana Dlamini Zuma [Cooperative Governance and Traditional Affairs Minister] is particularly lax here – and there is a total lack of consequences.

Moirra asked [rhetorically!] "What has Ben let us in for?"

Alf said that changing laws won't help without political will and [the application of] consequences [when evil-doers are identified].

The lack of consequences permeates throughout. It is not like Westminster – where people resign when there is even a hint of being implicated in wrong doing.

The NPA has two forensic investigators for the whole Eastern Cape! This is all their budget will allow, yet millions are diverted to SAA.

Bruce asked whether the induction of Members of Parliament was an issue of concern at all. Alf replied that Parliament organises many seminars in an attempt to induct members. Induction is somewhat basic. It happened, but it deals with the operations of Parliament. The induction does not look at ethics – at what it should mean to be "Honourable".

¹² Gavin Woods MP (IFP then), the former SCOPA chair who tried – without success – to stand up to the ANC over the revelations of corruption in the 1998-2001 arms deal.

¹³ <https://pmg.org.za/committee-meeting/30235/>

¹⁴ See <https://pmg.org.za/committee-meeting/9653/> He was co-chair of the process.

Many members [turn up completely unprepared for committee meetings]. They ask a stupid question and sit back, thinking that their job is done!

Members of our Parliament should be people with an impeccable reputation. But who do we get? The latest EFF Member had been convicted of murder! The EFF members have got a lot worse since 2014.

Should there be an ad hoc committee to deal specifically with the annual reports of departments and responses?

Alf said that the volume of reports tabled in Parliament is outrageous. There are too many departments and state-owned entities, [every one of which has to table their annual report and annual financial statements in Parliament.] Another committee dealing only with these reports will just flounder. Look at the existing committees! The majority of Members do not actually read the reports. They look for titbits. They don't analyse and compare reports. There is a need for more in depth interrogation of reports. But most people don't know how to read annual reports. We have in Parliament people who don't understand financial statements. They run away from this.

An ad hoc committee on reports would get captured just like any other. Vincent Smith was head of the ad hoc committee on party funding. The outcome was set in advance. You need independence from the governing party [to operate effectively and properly as a committee]

Should committee chairmanships be divided between all parties proportional to their representation in Parliament? So it is not only SCOPA who has a non-ANC chair.

Alf spurned this idea (raised by Martin, Lawson and Corder!): Imagine if the EFF ran a committee! What a debacle that would be! The rules of Parliament are based on honourable people, but few are left. Imposing more and more rules to try and control the urges of Members is to do the wrong thing. You try to force people to do things by the rules. But then you expect "good people" to be elected to a parliament.

Researchers employed by Parliament are discounted by MPs. Some are good. Their work is not used enough in Committees. The Parliamentary Budget Office was useful at times, then that young fellow left [Dr Sean Muller, who thought he deserved Dr Seeraj Mohamed's position]. We [as opposition members] don't have much of a level of trust with Parliamentary staff.

NOTE

Before the interview, Alf sent the IFAA team slides from AG presentation to SCOPA on 23 October 2019 {available at PMG web page: <https://pmg.org.za/committee-meeting/29139/>} and directed our attention to slides 32 onwards. This section presents the plan of the AG for a "Phased in approach" to gradually introduce the Expanded Mandate of the AG by selecting just 16 auditees for attention – Alf asked why is this done slowly? Why didn't the AG act determinedly to get just one example of actual action being taken? The expanded mandate became law over a year before – from 1 April 2019. Not a single Accounting Authority/ Accounting Officer (AA/AO) had been issued with a certificate of debt by September 2020. Alf feels the AG is biased towards government and has no excuse to implement the laws of parliament "slowly".

List of internal AG Project Bulletins

- AG Project Bulletin 16. 11 September 2020 [Interview with Mr Alf Lees MP] *DRAFT finalised 6-Dec-20*
- AG Project Bulletin 15. 18 August 2020 [Consultation follow-up: Note on CASAC, OVAC and Corder – existing recommendations towards improving accountability]
- AG Project Bulletin 14. 09 August 2020 [Analysis of documents sent in by the Deputy Speaker on 06 August 2020]
- AG Project Bulletin 13. 07 July 2020 [Interview with Auditor General: Mr Kimi Makwetu] *DRAFT awaiting comments*
- AG Project Bulletin 12. 26 June 2020 – revised 8 July – finalised 17 July [Checks, in theory – balances, not really: What the devil do we do? IFAA brief for a consultative meeting with informed colleagues – mainly from civil society on 30 July 2020].
- AG Project Bulletin 11. 02 June 2020 [Interview with Mr Jan van Schalkwyk, AGSA]
- AG Project Bulletin 10. 30 April 2020 [Notes from a conversation with Michael Acres]
- AG Project Bulletin 09. 16 April 2020 [Notes from a conversation with Murray Michel]
- AG Project Bulletin 08. 07 April 2020. [Parliament is an unlikely champion of the Auditor General]
- AG Project Bulletin 07. 19 March 2020. [MN Reflection on Parliament’s lack of effective response to the intimidation of AG staff in Nelson Mandela Bay in November 2019 and on 18 March 2020 *City Press* article by Kimi Makwetu: *How SA can rid itself of wasteful, fruitless, unauthorised and irregular expenditure*]
- AG Project Bulletin 06. 29 March 2020 [Interview with Mr Wessel Pretorius, champion of the independence of Auditors General, 17 March 2020].
- AG Project Bulletin 05. 16 March 2020 [Notes from our Interview with Mr Mkhuleko Hlengwa MP, Chairperson of the Select Committee on Public Accounts (SCOPA)]
- AG Project Bulletin 04. 13 March 2020 [Reflection on AGSA 100 year legacy book]
- AG Project Bulletin 03. 10 February 2020 [Reflection on SCOPA’s efforts to have former Prasa board members declared delinquent]
- AG Project Bulletin 02. 12 November 2019/ [Draft discussion paper - Auditor General project: Improving governance in South Africa: What checks and balances are missing?]
- AG Project Bulletin 01. 31 October 2019/ [list of the relevant legislation related to the role of the Auditor General w r t reporting to Parliament; example of the information on AGSA reports on departments that is summarised by Parliament for the information of SCOPA]

CURRENTLY

Member at Standing Committee on Public Accounts (National Assembly Committees)

Member at National Assembly (Parliament) since 22nd May 2019

FORMERLY

Member at National Assembly from 21st May 2014 until 7th May 2019

National Council of Provinces (KZN) from 11th June 2009 until 21st April 2014

Public Accounts (SCOPA): Audit Outcome 2018/19: briefing by Auditor General, 23 October 2019

Chairperson: Mr M Hlengwa (IFP)

From PMG meeting report Public Accounts (SCOPA): Audit Outcome 2018/19: briefing by Auditor General, 23 October 2019. Available at < <https://pmg.org.za/committee-meeting/29139/> >

Mr Kimi Makwetu, Auditor General (AG),...said ... There were several root causes for the lack of improvement in audit outcomes:

- There was a lack of urgency in responding to AGSA messages about addressing risks and improving internal controls. At fault were accounting officers and senior management -- political leaders and oversight bodies such as public accounts and portfolio committees.
- Instability and prolonged vacancies in key positions caused a capacity gap.
- Inadequate consequences for officials who deliberately or negligently ignored their duties. If they were not held accountable, such behaviour could be seen as acceptable and tolerated....

Mr A Lees (DA) said irregular spending was on the increase. Such spending would remain on the books until it had been investigated and condoned. Accounting officers were slow in obtaining condonation. There appeared to be no consequences for failing to deal with old irregular expenditure issues.

He referred to SOEs which delayed their annual reports because there were doubts about their status as going concerns. Could the AG not table his audit reports ahead of their annual reports? Why hold back when the SAA's 2018 annual report was more than a year late and becoming a useless document?

Mr Lees asked how the Standing Committee on Public Accounts (SCOPA) could be reassured that the audit fees charged by AGSA were fair and competitive with private-sector auditors. He suggested that AGSA was in a non-competitive position and its fees were extremely high.

... Mr Makwetu said ...

Irregular expenditure was growing because of a lack of consequences for those responsible. The expenditure would be flagged by AGSA, there would be engagement with SCOPA, a report would be tabled, resolutions would be adopted -- and the next year there would be

even greater irregular expenditure. “How loud can these voices be? Can they be even louder?” he asked.

Outstanding annual reports affected auditors’ ability to start an audit for the new year. The new financial statements had to have an opening balance, and this could not happen if they had no idea of the previous year’s closing balance. AGSA could not submit its audit report ahead of an outstanding annual report which had not been signed off. Mr Makwetu pointed out that when AGSA said SAA had not submitted a report for 2018, it meant that SAA had not completed its financial statements. “The statements must tell a story. We must satisfy the owners of the assets that the story is credible. We cannot force ourselves into the story,” he said, adding that supervisory authority lay with Parliament.

On the question of AGSA’s audit fees, he told Members that there had been huge investments in AGSA’s capacity. The number of chartered accountants employed had grown from around 70 to 700. He reminded members that the fees paid by departments ultimately came from the National Revenue Fund, whether they were paid through invoices or by appropriation. AGSA trained and produced large numbers of accountants, many of whom found employment elsewhere in the public service.