

AG Project Bulletin 06

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Interview with Mr Wessel Pretorius, champion of the independence of Auditors General, 17 March 2020

Mr Wessel Pretorius, who retired in 2017, has been a long-term champion for the full independence of the Auditor General.¹ As part of the AG of the previous government, he was an advisor at Codesa. This was when the historic legislated guarantee of **independence of the AG** was included in the Interim Constitution. The principle was carried over into the 1996 Constitution. He interacted at Codesa with Gill Marcus and Maria Ramos, for whom he expressed admiration as being entirely focused on the public good and proper management of public finances.

As corporate executive manager in the office of the Auditor General, he worked with people such as Ismail (Momo) Momoniat in the National Treasury on legislative principles that underpinned the Public Audit Act in 2004 (although Wessel was not happy with some of the provisions – such as those which gave the AG powers of search and seizure. He believes the AG should never do the administrative work of government, as this could compromise *de facto* independence.)

After 2004, Wessel became the first executive officer in AFROSAI-E, the organisation of English-speaking supreme audit institutions in Africa. The secretariat for the new organisation was established in Pretoria (where it still is, and where Wessel lives).

We spoke for over an hour on the phone and these notes cannot do justice to the discussion – or to Wessel’s depth of experience, which included observations on auditing oversight and accountability in Brazil, Portugal, Mozambique, Canada, the USA, the Netherlands and the UK.

My general question was: with our internationally top notch AG, how it is that the recommendations of the AG are so often not followed by auditees and the executive? Wessel responded that the reaction on recommendations of the AG is huge concern and that it was a “very interesting topic”.

Wessel had little hope that Parliament would ever step up to hold the executive to account for material irregularities in public finances. Parliamentarians defend their parties, that is our system.

This note focuses on two “take-aways” from the interview:

¹ His specific role in convincing the then Auditor-General Henri Kluever of the need for AG independence in 1992 is described in the AGSA 100 year history. See AGSA (2014: 48).

Takeaway 1: An Accountability Court?

Parliament has a strong oversight mandate to take action to ensure accountability of the executive – but they never use it. The fundamental reason that the recommendations of the AG can be ignored is that there is no mechanism to get around basic political obstacles. The MPs of the ruling party (often supported by the Speaker) protect the executive and their political party. The ANC has a majority in SCOPA. (This is by no means a problem specific to the South African parliamentary system.²)

Brazil (and some other countries, including Mozambique and Portugal) use the court system to ensure that recommendations of its “supreme audit institution” (SAI) – the Auditor General – are implemented.

This could be achieved in South Africa through an “**Accountability Court**” – a juridical, not an auditing authority, headed by a senior justice, like Judge Zondo.

If an Accountability Court were created, it could consider cases on the mismanagement of public finances by accounting officers or the executive referred by the Public Service Commission, the Public Protector or the National Treasury. And Parliament itself – if the executive fail to act on reports adopted by the House.

The AG cannot solve the problem of getting its recommendations implemented. The function of the AG is to audit and report. Oversight is a separate responsibility. An Accountability Court should be designed to act on issues rapidly. One of the significant problems with our systems in South Africa is the very long time taken by our processes at present. People lose trust in the process because of the time taken. We have first world standards in our institutions and complex rules which don’t accommodate the needs of poor people and deprived communities for speedy action.

An Accountability Court could use a rapid action model to get results in three months. The Accountability Court would have its own audit capabilities – to interpret the evidence already gathered by the AG – and legal capability to present the case to the judge for swift action.

The Accountability Court would not be limited to the public sector. Private sector firms (such as Steinhoff, and their auditors) could also be subjects of investigation.

The AG already has to submit to Parliament an Annual Report that summarises the key recommendations and the status of each in terms of being addressed. This report is trumpeted in the press for two weeks and then it disappears. There is no political will to address Prasa, Eskom, SAA – formerly sound public entities are now all in crisis. Evidence adduced from the Zondo Commission hearings and from Parliament’s own hearings in 2018 would be enough to take to the accountability court immediately.

In our initial discussion at IFAA in October/November 2019, Ben Turok wanted SCOPA to refer cases of wrong doing to “the room next door” where the NPA, the police and the Hawks

² See the pointed discussion on this issue in Fiedler, F. (2003a) “The Independence of Supreme Audit Institutions” in INTOSAI (2004:108-123)

were waiting. You need quick action. The AG already provides an evidence-based audit report. An audit Accountability Court system would send a strong message.

An Accountability Court in SA would supplement the National Prosecuting Authority and get prosecutions under way quickly. This is a possible proposal to put to the stakeholder consultation – but it needs better definition.

Note that an Accountability Court is a controversial proposal, because it goes against the current trend to give more powers to the Auditor General himself to enforce the recommendations made in reports – when “material irregularities” are identified. The problem here is that when the AG gets involved in government administration, it can lose its independence. The AG and its audit staff also become a target for corrupt officials who need to prevent material irregularities from being declared.³

Takeaway 2: The need for clear rules, not flexible principles in managing public expenditure

The new democratic dispensation brought major changes in the law to promote wide public participation in government at all levels. The Municipal Systems Act, 2000, for example, introduced the concept of the Integrated Development Plan. In the MFMA of 2003, this was tied to the municipal budget for each year and aimed to implement people-driven plans for a non-Apartheid environment. No longer were decisions made administratively – by town clerks, provincial officials etc. Every square metre of SA was now part of a local municipality or part of a Metro. Municipal government had elected representatives, who appointed their own officials and ran their own procurement processes. Treasury regulations and laws soon provided a framework for elected representatives to make principled decisions in the public interest. Unfortunately, despite all the training on IDPs, the seminars on the procurement, BEE and property legislation, too few people had the experience, skills or capacity to satisfy the high expectations of the new systems. These were flexible (to cater for specific local needs) and driven by principles of sound governance and good management. But they were implemented by people. New politicians thought (and think) it was their job to intervene in the administration, and ensure that their family and friends were employed and their contacts rewarded with tenders. Treasury put in place rules on how to apply principles of good governance, rather than rules on what to do! The tick-box culture spread as consultants were engaged to help municipal, provincial and national departments meet the Treasury deadlines for annual budgets, plans and reports. The result was to slow things down (rather than speed up development) as decision-makers hesitated, uncertain what they needed to do, rather than following rules on what to do – which had been the administrative system in place before. Town clerks had very little leeway. New municipal managers, on the other hand, leading municipalities from 2000 could plan trips to China to learn about local pollution control; appoint their own tender adjudication committees for procurement and accept provincial housing plans that came without maintenance money or infrastructure. They could also spend municipal income on new buildings, business hubs and taxi ranks – while not paying Eskom and water bills.

Wessel did not say any of this. He just said that with the Treasury rule book and the Tender Bulletin in the past – people followed strict rules and there was less space for things to go wrong. Of course these people were largely career public servants who had worked their way

³ See AG Bulletin 07 – Parliament’s failure to address threats against AG staff in Nelson Mandela Bay.

up the hierarchy over decades. They followed rules as they had always done and had a memory of how rules had been followed in the past. SA was not ready for the generous powers opened up by the new system.

This goes some way to explain why financial management and governance did not meet the expectations of the drafters of the new laws. It probably does not indicate a way forward. The rules of the past had colonial, racist and paternalistic foundations. They had to be done away with. We still have to find a way to make the new democratic system work.

[Gavin Woods, chair of SCOPA during the Arms Deal scandals, said in 2010 that the deterioration in organisational and management systems in government was caused by “policies introduced by the post-1994 government for transforming the racial make-up of the public service [which] have left it more prone to incompetence and corrupt behaviour – simply due to the serious loss of hard management experience and crucial institutional memory.” He also pointed to the low consequences when corrupt individuals are caught.]⁴

Notes on the proper mandate of an independent AG

Wessel did not agree with some of the features of the Public Audit Act, 2004 (and, by implication the 2018 amendment which now allows the AG to issue ‘certificates of debt’ to errant accounting officers.) He always believed that the AG should not get involved in the “administration of the country” – for example in having powers of search and seizure, rather than just recording that requested evidence was not available for an AG report. Kimi Makwethu has admitted that these powers have never been used in fact. In Wessel’s view they should not be there in the law. There should rather be strong prosecuting agencies to which the AG could refer matters. The AG should be an independent entity that reports on what it finds. [It should ask for information to interpret, but not have to go looking for information itself.]

Only one to blame – the ANC

As to why the recommendations of the AG are so often not followed, Wessel said there is only one to blame – the ANC. You will never get recommendations followed because this is seen as a bad reflection on the ruling party. In South Africa, we elect parties, not individuals. The ANC lacks the political will to make decisions [to implement AG recommendations]. If people are driven by greed and self-interest, that is what will happen. [The correct route is to appoint competent people, who stay in jobs and are accountable over time. In the present system the ANC deploys someone, who arranges a few procurement deals for their friends, and two years later has moved on to another position in government, where the pattern is repeated.] Unfortunately, the AG experiences a lot of political pressure.

Wessels’ suggestion is to look at a country like Brazil, which uses its court system to ensure that AG recommendations are implemented. The same is true of the system in Mozambique. This could be achieved in South Africa through an “**Accountability Court**” – a juridical, not an auditing authority, headed by a senior justice, like Judge Zondo.

Parliament has a strong oversight mandate to take action to ensure accountability [of the executive] – but they never use it. Wessel said he did not understand why SCOPA did not [could not?] submit cases for prosecution. He did not believe this should be a responsibility of the AG. “There is conflict if the AG is involved in administrative procedures.”

⁴ Woods (2010).

The fundamental reason that the recommendations of the AG can be ignored is that there is no mechanism to get around what is already driven by a political agenda and it open to political manipulation. [The ANC has a majority in SCOPA]. This situation is a misstep.

If an Accountability Court were created, it could consider evidence put forward by the Public Service Commission, the Public Protector or the National Treasury. The AG cannot solve the problem: its function is audit and report. Oversight is a separate responsibility. There is already an Environmental Court in South Africa – it can act on issues rapidly, as an Accountability Court could also. Action under the extended powers granted to the AG in 2018 will take years to get results. Wessel said that the Accountability Court would not be limited to the public sector. Private sector firms (such as Steinhoff, and their auditors) could also be subjects of investigation.

One of the significant problems is the very, very long time taken by our processes at present. People lose trust in the process because of the time taken. We have first world standards [in our systems] which don't accommodate poor peoples' needs for speedy action. The Public Protector makes findings and these are considered in court at the expense of the tax payer over months and months.

An Accountability Court could speed up the process to get results in three months – Wessel got the idea from what he saw on visits to Brazil, and also Portugal and France. In the UK, new legislation for the AG has ensured it produces excellent reports [and has mechanisms] to ensure the reports are attended to.

In South Africa, the AG must submit an AG Annual Report that summarises the key recommendations and the status of each in terms of being addressed. This report is in the press for two weeks and then it disappears. There is no political will to address Prasa, Eskom, SAA – formerly sound public entities are now all in crisis. In the past, appointments to state entities were made via the Public Service Commission purely based on competence. Now people do two transactions and move on. Who is then accountable? People are untouchable [because of political interference or political barriers to action.]

This threatens to have an impact on the AG itself – its people work hard, but recommendations are not implemented – the result is that people will lose interest in the AG. Good staff will leave. The new expanded mandate legislation is trying to address that gap. The Zondo commission has already shown there is enough evidence [to hold people to account]. Perhaps there is a need to re-look at the situation, perhaps via a think tank. (In the Netherlands, their 'court of audit' is different, being a consensus system [?]. In Brazil, people with legal qualifications are part of the AG's office – they should be independent.

In South Africa, the moment you have a sensitive case what do you think will happen? [There is a furore on the] TV, and a great statement but the case disappears into the system. I said that Ben Turok wanted SCOPA to refer cases of wrong doing to the room next door where the NPA, the police and the Hawks were waiting. Wessel said he agreed that Parliament must refer cases to the authorities, but Parliament then needs a tracking system. It takes years. Evidence disappears. You need quick action. The AG already provides and evidence-based audit report, [this has to be supplemented by] a management report supported by adequate

evidence. A right of appeal must also be allowed. A just audit Accountability Court system would send a strong message.

In Mozambique, there have been 8 judgments [in their audit accountability system]. Wessel/AFROSAI-E/(?) assisted them with seven of the reports so that they would meet the requirements of a court. It is the court that imposes the penalties.

Of course, Wessel emphasised, this audit Accountability Court would extend to the private sector as well! The Accountability Court has its own competent people for investigations – it does not rely solely on the evidence assembled by the auditors of the entity in question.

I asked whether the accountability court in Brazil had been involved in the corruption scandal at the state oil company Petrobras, known as the Operation Car Wash (Lava Jato), which was one of the factors leading to President Lula being jailed. Wynand was not sure about this “It may have been more political than about auditing.”

An accountability court in SA would supplement the NPA [and get prosecutions under way quickly].

Wessel pointed to the impossible challenge faced by our public accounts committees in Parliament, and in the legislatures and municipalities. SCOPA meets only four hours a week – and the volumes are vast. The time allowed by Parliament for [proper scrutiny of the AG reports on public accounts] is simply not adequate for South Africa’s circumstances. Where things are dirty, the people on the committees protect the people who their party appointed. When there is a party with a huge majority, checks and balances are weakened. “We must stop the system of cadre appointments”. This is why municipalities are a disaster in many areas. Pretoria is a mess.

A doubtful transition from rules to principles

Wessel had debates with Momo and other Treasury officials in the late 1990s on the PFMA and the MFMA and on whether South Africa was ready for this [new system, which involved a radical move] from the previous “rule driven” system – where there was a Treasury book and set rules to follow for every purchases and every decision – to a principle-driven environment.

Before the PFMA and the MFMA, there were Treasury instructions that described step by step what had to be done. No judgment was needed. Decisions just had to align with policy. The state tender board system provided set prices and limited delegations.

After the PFMA and MFMA, it became increasingly clear that we don’t have the capacity. Municipalities rely heavily on consultants to comply with the intricacies of the MFMA. (Many municipal offices have the offices of one of the big four accounting firms opposite or next door of Malmesbury!)

Wessel said the AG is able to audit for compliance with the laws, but it has no capacity on performance audits. Regulatory authorities are often not doing their work properly.

Until 2004 the AG had an oversight responsibility for the Eskom audit – which was conducted by joint auditors from the private sector. The AG met once or twice a year with the

auditors of Eskom – and other major entities like Transnet - as part of this oversight role {when did it start? After or before the Reporting by Public Entities Act, 1992} [This became a state capture weak point when one of the Eskom audit companies, Nkonki Inc, was purchased by representatives of the Guptas in late 2016, through a fronting arrangement. The other auditor of Eskom was the tainted giant KPMG. See <https://www.dailymaverick.co.za/article_tag/nkonki-inc/>.] This oversight stopped with the Public Audit Act in 2004.

The AG did not have the capacity to undertake the audits of all public entities itself. Under the PFMA, the whole board of directors of a public entity is the accounting authority (unlike in government departments where the director general, as an individual, is the accounting officer. How do you keep a *board* accountable,? asked Wessel. It must rest with an individual accounting officer because the one board member blames the others and you will never get a culprit.

A theme of the discussion was Wessels' view that there is a need for SA to move [away from the flexible, principle-driven environment set by the PFMA/MFMA] back to a finance environment driven by rules. He cited the example of the historic system of Tender Boards, where there were standard tenders issued for everything needed by municipalities and government departments. These country-wide tenders would establish prices and suppliers would be identified in each area. A department needing cell phones or computers would go to the tender bulletin and choose a supplier who could deliver locally. Now, under the PFMA, each municipality had its own tender process. This was supposed to expedite processes – but it did not. The administrative effort needed was greater.

The productivity in the public sector is a critical issue. You cannot just reduce the number of people [when you have a service delivery problem]. You need to look at productivity levels in the public service. Benchmarks are widely available from international organisations. The work study capacity in government is no longer there. The Public Service Commission had a work study office that would, for example, look at the accounting system in the AG's office [and establish a productivity norm] for the number of hours per audit for a hospital. [Without having such benchmarks to refer to] people are wasting time. It is not so complicated - going back to basics

If we create an accountability court, the Public Service Commission, the National Treasury, [Parliament] can refer cases.

In dealing with [financial mismanagement that is found at municipalities] the failure of provincial governments to act on their [oversight] responsibilities is an issue. [The AG] assisted with the design of a financial capability model for departments. Step-by-step, this could grow into a capability model system – as the Canadians did it – after identifying capacity and constraints.

The AG has pointed out weaknesses [in the management of public finances] in his annual reports. If people are driven by greed and self-interest ... that is what will happen

Auditing : private firm scandals, amalgamation with TBVC

Wessel said he was “quite sceptical” of the new powers being sought by the Independent Regulatory Board for Auditors (IRBA). If one is honest, the whole process of auditing is

managed by the big four firms: Deloitte, PwC, EY and KPMG. [Bernard Agulhas the CEO of IRBA said that] National Treasury wants to withdraw from funding 50% of IRBA's budget. If government sees the need to regulate, it must finance regulation itself. If the supervision of the audit profession is funded only by the audit profession, you know what will happen!

Independence of the AG was a hard-fought point at Codesa, for inclusion in the Interim Constitution. Wessel worked for hours with Maria Ramos and Gill Marcus on this provision – which was carried over into the Constitution in 1996. The AG was under severe risk of “being taken over” when South Africa's AG amalgamated with the AG offices in the TBVC states. Wessel worked closely with Andrew Feinstein MP (then the head of the ANC caucus in SCOPA) and the chair of SCOPA, Gavin Woods MP. Cracks in the independence of the AG started with the arms deal where, against Wessels' advice, the AG agreed to a joint report – which was not independent.⁵

[Today] the AG can be very proud that it is the best-structured [public audit] office in the world. Professional people are the auditors (unlike in the past, where audit functions were done by civil servants who were not professionally qualified). The AGs findings are substantiated by proper evidence.

Checks and balances

Some of South Africa's most serious public finance problems have originated in the state-owned enterprises and entities. Many of the SOEs were (and are) not audited by the AG, but by private-sector audit firms. Until the early 2000's, the AG played an oversight role with respect to SOE audits that it did not conduct itself. Senior officials of the office of the AG would sit round a table with the private sector auditing firms responsible for particular audits – including Eskom, Transnet (then including South African Airways), etc. This provided a useful set of checks and balances, which would have been invaluable in recent years, when the ethics and integrity of the private auditing firms – even the biggest – were proved to have been wanting.⁶

Government makes the boards of directors of SOE's accountable for financial affairs. This results in an impossible situation where the one director blames the other or denies knowledge or involvement. You cannot make a whole board accountable. Accountability for financial matters must always be attached to an individual. Otherwise the checks and balances will not work

Wessel said he would be happy to have further discussions. If Jan van Schalkwyk is OK with it, we could invite Wessel to the stakeholder consultation.

⁵ See Feinstein (2007) for a general, not very useful account. Holden and van Vuuren (2011) have more details. Crawford-Browne (2020) has no index and its stream of consciousness bumping into over 500 references (from conspiracy theorist to Pippa Green). But it has some telling reminders of the arms deal scandals.

⁶ There is an example that could be probed. According to PMG reports of a SCOPA meeting on 11 March 2020, the TransCaledon Tunnel Authority, was audited by a private firm and always obtained clean audits. In 2019, the TCTA financial statement were questioned by the AG as part of the audit of the Department of Water and Sanitation, which includes that of the Water Trading Entity and TCTA. The AG found gaps in the TCTA records that were so serious that there was a probability of a disclaimer on the audit opinion of the Department as a whole! See “Non-Tabling of Annual Report: Department of Water and Sanitation” Standing Committee on Public Accounts (SCOPA), 11 March 2020 [Available from PMG: <https://pmg.org.za/committee-meeting/30024/>]

References

Auditor General South Africa (2014) 100 Years Legacy and Legends 1911-2011. pp.110
Available at: <https://www.agsa.co.za/AboutUs/CorporateInformation/TheLegacyBook.aspx>

Crawford-Browne, T. (2020) Eye on the Gold. Milnerton: Terry Crawford-Browne using Reach Publishers

Feinstein, A. (2007). After the party : a personal and political journey inside the ANC. Johannesburg: Jonathan Ball.

Fiedler, F. (2003a) “The Independence of Supreme Audit Institutions” in INTOSAI (2004:108-123)

Holden, P. & Vuuren, H. (2011). The Devil In The Detail : How The Arms Deal Changed Everything. New York: Jonathan Ball Publishers.

INTOSAI (2004) INTOSAI: 50 Years (1953-2003) A Special Publication of the International Organization of Supreme Audit Institutions. Vienna, Austria. Available at: https://upload.wikimedia.org/wikipedia/commons/0/03/INTOSAI_50_Years.pdf
[Accessed 18-Feb-20]

PMG (2020) “Non-Tabling of Annual Report: Department of Water and Sanitation” Standing Committee on Public Accounts (SCOPA), 11 March 2020 [Available from PMG: <https://pmg.org.za/committee-meeting/30024/>]

Woods, G. (2010) Public sector corruption: Behavioural origins and counter-behavioural responses. Inaugural lecture delivered on 26 October 2010. Prof G Woods, School of Public Leadership, Faculty of Economic and Management Science, Stellenbosch University

AG Project Bulletin List

- 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?]

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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]